IN THE

Supreme Court of the United States.

OCTOBER TERM, 1909.

No. 164.

PINK FRANKLIN,

Plaintiff in Error,

vs.

THE STATE OF SOUTH CAROLINA.

In Error to the Supreme Court of South Carolina.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

I. THE FACTS.

Pink Franklin, a negro citizen of the United States and of the State of South Carolina, was charged on May 25th, 1907, before one J. I. Valentine, a Magistrate of Orangeburg County, in South Carolina, with an alleged crime, which is thus described in the affidavit of one J. D. Thomas, who preferred the charge (Record, page 17):

> "Personally appeared before me, J. I. Valentine, a Magistrate of said County and State, J. D. Thomas,

Union Township, who being duly sworn says: On the 22nd of May, 1907, one Pink Franklin *did wilfully and knowingly violate and break an Agricultural Contract given to deponent for year of* 1907, all of which is against the form of the statute made and provided in such cases, and against the peace and dignity of the State of South Carolina."

The Magistrate thereupon issued what is called in the Record an "arrest warrant," and appointed his brother, one H. E. Valentine, a special constable to execute the said alleged warrant. The form of the "warrant" is as follows (Record, pages 16-17):

"STATE OF SOUTH CAROLINA,

County of Orangeburg.

ARREST WARRANT.

I, J. I. Valentine, Magistrate in and for the County and said State.

To Any Lawful Constable—

Whereas, complaint upon oath has been made unto me by J. D. Thomas that at Thomas Place, in the County and State aforesaid, on 22nd of May, 1907 one Pink Franklin *violated and broke an Agricultural Contract.*

These are therefore to command you to apprehend the said defendant, Pink Franklin, and bring him before me to be dealt with according to law.

Given under my hand and seal this 25th day of May, one thousand nine hundred and seven.

J. I. VALENTINE, Magistrate. (L. S.)"

More than two months afterwards, that is to say, on the evening of July 28th, 1907, Valentine, the Constable, summoned one W. M. Carter to assist him in arresting the

plaintiff in error under authority of this pretended warrant (Record, page 24). The plaintiff in error had been in the meantime living on a farm belonging to a man named Spires (Record, page 30), and it would seem that he was not sooner arrested because, until that time, Thomas had no need of his services as a laborer; for one Sol Spires, testifying as a witness for the State, says of the plaintiff in error (Record, page 33):

> "He was working all about at odd jobs. *Mr. Thomas asked me to keep him there till he got ready to send for him.*"

About three o'clock in the morning of July 29th (Record, page 28), Valentine and Carter arose and started for Spires' farm, reaching there while it was still dark. They stopped at Spires' house (Record, pages 24-30-31), and asked him to induce Franklin to come up there, so that they might arrest him. Spires went to Franklin's house, awoke him and asked him to come up and do some ploughing for him (Record, page 31). Franklin replied that he would do the ploughing in the afternoon, but could not work for Spires that morning (*Ibid.*) On receiving this report, Valentine and Carter went down to Franklin's house. According to Carter's testimony, the door of the house and the inner door leading into Franklin's bedroom were both open (Record, page 49); according to the testimony of the accused, they were closed (Record, pages 40-41). The State proved by the witness Carter (Record, page 25) that Valentine rapped with a knife on the steps of the house, and called Franklin by name; Franklin denied that he heard anyone call him or knock (Record, page 41). There was no proof that Valentine announced himself as an officer of the law or stated his purpose to arrest Franklin; indeed, the evidence indicates clearly that it was his purpose to make the arrest by surprise, if possible, probably because he apprehended resist-

ance or flight on the part of Franklin. Finding that Franklin would not, or at all events, did not, come forth, Valentine directed Carter to go around the house to prevent his escaping by some rear entrance (Record, page 25), while he should enter the house and make the arrest. Franklin was in a bedroom on the ground floor of his house, in which were also his wife and little boy (Record, page 41). Soon after Carter reached the rear of the house several pistol shots were fired in rapid succession. He ran hastily back and, as he was about to enter the door, was caught by the leg by Franklin's little son. Nevertheless, he entered the house, and was at once struck by another pistol shot, inflicting a slight wound (Record, page 25). He then ran back to Spires' house, and. almost immediately after he reached it, was overtaken by Franklin, who was likewise slightly wounded, and who thereupon ran away (Record, pages 25-41.) It proved that Franklin's wife had also received a flesh wound, and that Valentine the constable was mortally wounded. As to what happened within the house, the only evidence was that of the accused and certain alleged *ante-mortem* statements of Valentine. According to a witness named Easterling, Valentine stated (Record, page 36):

> "That he went to the door and rapped on it and got no response and he walked in the door; he said the light coming in the door was in the room and that he saw no one; just as he walked in the door he said Franklin shot him, and I asked him why he did not use his gun, and he said that he could not, that they grabbed him and *rung* the pistol out of his hand. I asked him who shot the woman, and he said if she was shot that Franklin did that, he did not shoot at all. I asked him how it was that they came to take the pistol away from him, and he said that the shock from the effect of the shot was so great that they took the pistol away from him before he could recover; they took it away from

him before he could recover and while he was suffering from the effect of the shock from the wound."

And according to a witness named Hutto (Record, page 39):

"He said that after he was shot that Franklin wrung the pistol out of his hand, and that he did not fire a single shot; he said that Franklin did the shooting, and that after he was shot that a colored woman came in there with an axe and said that she had a good will to finish up the job, but that she did not finish it and he did not know why she did not."

The accused testified (Record, page 41):

"I did not hear anything till the door was hurled open and he came on in and busted the room door open, and he said to me, Hands up, and I did not move, and he up and shot me and I fell down by my pallet when he shot me, and I got my gun and fired, intending to get out of the way, and I got out as fast as I could."

There is no dispute that, in all, some four or five shots were fired, and it appears from the statements attributed to Valentine that he entered the house with his pistol in his hand. There was no evidence that Franklin knew anything about the warrant having been issued, and it appears from Carter's testimony, as well as his own (Record, pages 24-41), that he had no acquaintance with Valentine. There was some evidence to the effect that Franklin had said: "No one man could arrest him" (Record, page 34), and he testified as follows under cross-examination (Record, page 45):

"Were you not working for Mr. Spires?
Yes, sir.
Were you not under contract to J. D. Thomas?
Yes, sir.

You broke that contract, did you not?

I did not break it; I left on account of the terms we were on.

When you left up there, who hauled off your things from Thomas' place?

Some of my things are down there yet as far as I know.

You and your wife came off from up there and went on Mr. Spires' place in that house down there?

Yes, sir.

Did not Mr. Spires send a wagon down there for a part of your things?

Yes, sir; he got a portion of them.

Did not Mr. Thomas keep them from taking the balance?

Yes, sir; he said they must not move them.

You knew at the time that Mr. Valentine came there to your house that you were resting under the charge of violating a contract?

I knew that I had quit him."

But he also testified (Record, page 41):

"If you had time would you have surrendered?

Yes, sir.

Did you know that he was an officer of the law?

No, sir; I did not have any idea who he was.

Did he say he was a constable?

No, sir.

Could you see him?

No, sir; it was too dark."

Valentine died the same evening (Record, page 38). Pink Franklin and his wife, Sad Franklin, were thereupon indicted for murder (Record, pages 17-18) and tried. The female prisoner, against whom there seems to have been no

scintilla of evidence, was acquitted; the plaintiff in error was convicted and sentenced to death (Record, page 57). He appealed to the Supreme Court of South Carolina and the sentence was affirmed. Thereupon he has prosecuted the present writ of error.

The Act under which it was sought to arrest the plaintiff in error is Section 357 of the South Carolina Code of 1902. Its language is as follows (Original Brief, page 22):

> "Any laborer working on shares of crop or for wages in money or other valuable consideration under a verbal or written contract to labor on farm lands, who shall receive advances either in money or supplies and thereafter wilfully and without just cause fail to perform the reasonable service required of him by the terms of said contract shall be liable to a prosecution for a misdemeanor, and on conviction shall be punished by imprisonment for not less than twenty days nor morethan thirty days, or to be fined in the sum of not less than twenty-five dollars nor more than one hundred dollars, in the discretion of the Court; provided the verbal contract herein referred to shall be witnessed by at least two disinterested witnesses."

It is to be noted that the alleged warrant and the complaint on which it was issued would seem, at first sight, to have been fatally defective, even if this law were valid. "A warrant for the arrest of a person must state that the person is accused of *some offence* against the laws of the State, *naming the offence.*" Garcia vs. Sanders, 35 S. W. 52, page 54. In that case, the warrant, being made out by a person imperfectly acquainted with the English language, stated that the accused "is charged with *thiebs*" and was held a nullity; in this case the warrant merely says that the plaintiff in error "violated and broke an Agricultural Contract" (Record, page 17), which might well have been a contract to buy or to sell produce or fertilizer or cattle or poultry or even land, and,

like the complaint, says nothing about "advances." The sufficiency in form of these proceedings may prove to involve a Federal question; but in any case there is no doubt or dispute that the warrant was issued and Franklin's arrest attempted as part of a scheme, to which the original complainant, J. D. Thomas, the magistrate, J. I. Valentine, the deceased, H. E. Valentine, and the witnesses, W. M. Carter and Sol Spires were all parties, to enforce the Act of the South Carolina Legislature above quoted. This Court has said (*ex parte* Siebold, 100 U. S., page 376):

> "An unconstitutional law is void, and is as no law. An offence created by it is not a crime. A conviction under it is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment."

If, therefore, the Act of the South Carolina Legislature was unconstitutional and void, it was "as no law," and an attempt to deprive the plaintiff in error of his liberty in pursuance of its provisions was an act of lawless violence.

Nor is this all. U. S. R. S., Sec. 5526, is as follows:

> "Every person who holds, *arrests,* returns, or causes to be held, *arrested* or returned, or in any manner aids in the *arrest* or return of any person to a condition of peonage, shall be punished by a fine of not less than one thousand nor more than five thousand dollars, or by imprisonment not less than one year nor more than five years, or by both."

If it can be shown that the enforcement of the South Carolina Act above cited would have placed the plaintiff in error in "a condition of peonage," then the attempt to "arrest" him with a view to such enforcement, constituted an attempted crime against the United States on the part of the deceased, and the complainant, the Magistrate and the two witnesses above named were all implicated in this attempted crime.

II. Constitutional Questions.

The South Carolina Act, under which it was attempted to reduce the plaintiff in error to captivity, belongs to a class of statutes passed in several Southern States intended to enable landowners to compel specific performance of contracts for personal service on the part of agricultural laborers, and, to this end, making it a crime for such laborers to leave the service of their employers if they shall become indebted to the latter. The poverty and improvidence of such laborers in these States usually cause them to need and request advances from the landowners during the season when there is little demand for their labor, and the effect of these statutes is to deprive this particular class of citizens of their freedom of contract with respect to their labor as a consequence of this indebtedness. The validity of these statutes under the Thirteenth and Fourteenth Amendments to the Constitution has been repeatedly questioned. In language often quoted, this Court, speaking by Mr. Justice Peckham, said of the Fourteenth, in Allgeyer vs. Louisiana, 165 U. S. page 589:

> "The liberty mentioned in that amendment means, not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livehood by any lawful calling; to pursue any livelihood or avocation. and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

Relying upon the principle thus announced, and which has received, on more than one subsequent occasion, the approval of this Court,

Lochner vs. New York, 198 U. S. 45;
Adair vs. United States, 208 U. S. 161;

the parties affected have challenged the constitutionality of these statutes in a number of Courts, both State and Federal. While the language of different decisions regarding them cannot perhaps be satisfactorily reconciled, it may be asserted with confidence that no such Act has been sustained except when it was construed as making criminal a particular kind of fraud. Substantially on this ground, statutes of this character have been held constitutional in North Carolina, Georgia and Louisiana:

State vs. Norman, 110 N. C. 484, 14 S. E. 968;
Lamar vs. State, 120 Ga. 312, 47 S. E. 958;
Banks vs. State, 124 Ga. 15, 52 S. E. 74;
State vs. Thomas, 144 Ala. 77, 40 South. 271, 113 Am. St. Rep. 17;
State vs. Murray, 116 La. 655, 40 South. 930.

In the present statute there is no reference to fraud or to any intent on the part of the laborer to cheat or defraud his employer. The Supreme Court of South Carolina, passing upon it, in a case to be hereafter cited more at length, says on this subject:

> "It is not wilful nor intentional injustice the statute makes criminal, but wilful and unjust failure to carry out a contract. This distinction is vital. Clearly a laborer may wilfully refuse to perform the service required. His refusal may be unjust, and the service required may be reasonable, that is such as he contracted to give, and yet his action be free from fraud and taken with the utmost good faith, in the sincere

belief that his refusal was just and the service required unreasonable under the terms of the contract. Yet, however completely he may show his good faith, and however fully the Court and jury may be convinced of his good faith, conviction must follow unless the jury think he had just cause to abandon the contract, or that the service required was not reasonable * * * But 'justice' and 'fraud' and 'unjust' and 'fraudulent' are far from being convertible terms. Fraud is *corrupt* injustice."

Ex parte Hollman, 79 S. C. 9, 60 S. E. 19.

A statute similar in practical effect was declared unconstitutional by Jones, D. J., in the District Court for the Middle District of Alabama, 123 Fed. Rep. 671. That Judge says:

"The Act is plainly violative of the thirteenth amendment to the Constitution, and the statute passed, in pursuance thereof, against peonage. It establishes the system of peonage and uses the arm of the law to keep persons in a condition of peonage * * * by coercing performance of the obligation of contracts of labor or service by involuntary service."

The same conclusion was reached by the Supreme Court of Alabama in Toney vs. State, 141 Ala. 120; 37 South. 332; 109 Am. St. Rep. 23, the Court saying:

"This enactment cannot operate consistently with the guaranties of equality, liberty and property, made by the Federal and also by the State Constitution."

And quoting from the opinion of Mr. Justice Bradley in Butchers Union Company vs. Crescent City Company, 111 U. S. 746:

> "I hold that the liberty of pursuit, the right to follow any of the ordinary callings of life, is one of the privileges of a citizen of the United States."

At one time the statute under consideration was supposed to have been sustained, at least in principle, by several decisions of the Supreme Court of South Carolina:

> State vs. Williams, 32 S. C. 124, 10 S. E. 876:
> State vs. Chapman, 56 S. C. 420, 34 S. E. 961. 76 Am. St. Rep. 537;
> State vs. Easterlin, 61 S. C. 71, 39 S. E. 250.

But, when its constitutionality was submitted to the District Court for the District of South Carolina, in *Ex parte* Drayton, 153 Fed. 968, Brawley, D. J., in a very carefully prepared opinion, fortified by the citation of numerous authorities, held that it was invalid under both the Thirteenth and the Fourteenth Amendments. In this opinion he says:

> "To compel one person to labor for another against his will is legalized thraldom. It would scarcely be contended that Clement could by force or threats compel these petitioners to work for him against their will in payment of their indebtedness. Any such attempt on his part would be a direct violation of the Act of Congress of March 2nd, 1867, which forbids any attempt, directly or indirectly, to enforce involuntary service or labor in liquidation of any debt, and would subject him to a criminal prosecution and to the penalties denounced in that Act, and the same Act declares null and void the laws of any State or Territory which have heretofore been enacted to enforce involuntary service or labor in liquidation of debts."

He says further:

> "It will be observed that the statute nowhere declares that a laborer violating his contract shall be deemed guilty of a misdemeanor, and punished for such violation. It provides in terms that any laborer, etc., 'who shall receive advances either in money or supplies and thereafter wilfully and without just cause fail to perform the reasonable service required of him by the terms of the said contract, shall be liable to prosecution for a misdemeanor.' Its whole purpose is to coerce the laborer to perform the service required of him by the terms of his contract under penalty of prosecution and imprisonment if he fails to work. It is a legislative judgment enforcing involuntary servitude. It does not imprison the laborer because he refuses to pay the debt or return the advances, but because he does not continue in an involuntary servitude. Under the guise of police power, it compels one person to continue against his will to render personal services to another. If this Act and others of cognate character are sustained, the State may by its criminal laws completely nullify and abrogate the main object of the amendment prohibiting slavery and involuntary servitude, and establish a complete system of peonage."

This decision was rendered May 23rd, 1907. On January 6th, 1908, the question having been again presented to the Supreme Court of South Carolina, that Court overruled the decisions hereinbefore cited, and determined that the statute was not only invalid, as decided by Judge Brawley, under the Thirteenth and Fourteenth Amendments, but was also null and void under Art. 1, Sections 5 and 24 of the Constitution of South Carolina.

Ex parte Hollman, 79 S. C. 9, 60 S. E. 19, ***supra.***

With respect to its own previous decisions the Court says:

> "Nothing short of strongest conviction of fundamental error should induce the Court to essay a review of the conclusions embodied in these cases. We shall not discuss at length the doctrine of *stare decisis*. It seems obvious it has less force when the constitutional rights of the citizen to his personal liberty are involved than in those cases involving the fixedness of property rights and the regularity of procedure. With the profoundest respect for the judges who delivered and concurred in these opinions, we cannot avoid the conclusion that the statute in question provides for imprisonment for debt without proof of fraud, and therefore attempts to deprive the citizen of one of the personal rights guaranteed by the Constitution of the State."

With regard to the Federal questions the Court says further:

> "It is important to observe our statute places no limit on the time for which a laborer may be bound under a contract to work, nor does it allow him to release himself from his burden to continue the service, on pain of puinshment as a criminal, by repayment of the advances. The statute not only enforces involuntary service of the laborer because he has contracted a debt with his employer, but it enforces his involuntary service because the debt once existed, though it be paid. Thus it falls within the prohibition of the peonage statute and goes beyond it. It is no answer to say the laborer originally entered into the contract of service and contracted the debt voluntarily. The peonage statute is directed against *maintaining* as well as *establishing* involuntary servitude in liquidation of any

debt or obligation. It is nothing in support of the statute now attacked that it enforces involuntary servitude on account of a debt by the compulsion of a statute providing for indictment and imprisonment for quitting such service, rather than allowing the employer to compel it under guard. In contemplation of the law the compulsion to such service by the fear of punishment under a criminal statute is more powerful than any guard which the employer could station."

And again:

"Finally, we consider whether the statute is opposed to the fourteenth amendment to the Constitution of the United States and Section 5 of Article 1 of the Constitution of the State as denying to a farm laborer falling under it the equal protection of the laws. We incline to the opinion that a statute not admitting of this objection could be framed, making criminal and punishable by imprisonment a farm laborer's fraud in obtaining advances, and a landlord's fraud in contracting with a laborer, and that it would be no valid objection to such a statute that it did not apply to all persons or even to all laborers and employers. * * * But, even if this statute provided punishment only for fraud in such contracts it violates the 13th amendment to the Constitution of the United States, and Art. 1, Sec. 5 of the State Constitution, in that it does not bear equally on the landlord and on the laborer. The parties to a contract are entitled to equal sanctions of the law for the protection and enforcement of their rights under it. Here the laborer is to be punished for his refusal to perform the service after receiving advances, while no punishment is provided for the landlord who may receive in advance the laborer's service and refuse to pay his wages. In addition to this, there is a patent and arbitrary distinc-

tion made between laborers who stand upon precisely the same legal footing. The laborer who receives advances and refuses to perform the service contracted for is liable to indictment, and the statute makes no provision for him to save himself by the repayment of the advances; while the laborer who abandons his contract without having received advances does not fall under the statute. The laborer who receives advances in good faith and pays the debt cannot stand in a legal or moral attitude different from that of a laborer who has never received advances, and there is no ground to classify the former as a criminal for abandoning his contract while exempting the latter. Equal protection of the laws embraces the right to equal exemptions. Hence, when the laborer pays back the advances, and thus places himself upon an equal footing with a laborer who has received no advance, he is entitled to the same exemption from punishment."

This decision of the Supreme Court of South Carolina establishes conclusively the invalidity of the statute under the State Contitution. Of course, it is not conclusive upon this Court as to the Federal questions, but it is sustained by strong and persuasive authorities. In Clyatt vs. U. S., 197 U. S., page 215, this Court has said:

"What is peonage? It may be defined as a status or condition of compulsory service, based upon the indebtedness of the peon to the master. The basal fact is indebtedness. As said by Judge Benedict, delivering the opinion in Jaremillo vs. Romero, 1 N. Mex. 190, 194: 'One fact existed universally; all were indebted to their masters. This was the cord by which they seemed bound to their master's service.' Upon this is based a condition of compulsory service. Peonage is sometimes classified as voluntary or involuntary, but this implies sim-

ply a difference in the mode of origin, but none in the character of the servitude. The one exists where the debtor voluntarily contracts to enter the service of his creditor. The other is forced upon the debtor by some provision of law. But peonage, however created, is compulsory service, involuntary servitude. * * * A clear distinction exists between peonage and the voluntary performance of labor or rendering of services in payment of a debt. In the latter case the debtor, though contracting to pay his indebtedness by labor or service, and subject like any other contractor to an action for damages for breach of that contract, can elect at any time to break it, and no law or force compels performance or a continuance of the service."

And again (197 U. S., page 218):

"It is not open to doubt that Congress may enforce the Thirteenth Amendment by direct legislation, punishing the holding of a person in slavery or in involuntary servitude except as a punishment for crime. In the exercise of that power Congress has enacted these sections denouncing peonage, and punishing one who who holds another in that condition of involuntary servitude. This legislation is not limited to the territories or other parts of the strictly national domain, but it is operative in the States and wherever the sovereignty of the United States extends. We entertain no doubt of the validity of this legislation, or of its applicability to the case of any person holding another in a state of peonage, and this whether there be a municipal ordinance or state law sanctioning such holding. It operates directly on every citizen of the republic, wherever his residence may be."

In this instance, the South Carolina Act *is* a "municipal ordinance or state law sanctioning such holding" in involun-

tary servitude as is forbidden by the Thirteenth Amendment and the statute (U. S. R. S. 5526) under consideration in that case. U. S. R. S. 1990, the constitutional validity of which is also sustained in the last-mentioned decision, is, in substance, declaratory of the Thirteenth Amendment, so far as it relates to the status intended to be created by any pretended laws of the character indicated. This section is as follows:

> "Sec. 1990. The holding of any person in servitude or labor under the system known as peonage is abolished and forever prohibited in the territory of New Mexico, or in any other territory or State of the United States; and all acts, laws, resolutions, orders, regulations or usages of the territory of New Mexico, or of *any other* territory *or State,* which have heretofore established, maintained or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain or enforce, directly or indirectly, the voluntary or involuntary service or labor of *any persons* or peons, in liquidation of any debt or obligation, *or otherwise,* are declared null and void."

If this law be valid, and this Court has so decided in Clyatt's Case, *supra,* then it seems too clear for argument that the South Carolina statute is invalid under the Thirteenth Amendment, as was decided by the Supreme Court of that State and also by the United States District Court for that district.

The question would seem almost equally clear under the Fourteenth Amendment. In State vs. Julow, 129 Mo. 163, 50 Am. St. Rep. 443, an Act was involved closely resembling Section 10 of the Erdman Act subsequently held invalid under the Fifth Amendment by this Court in Adair vs. U. S., *supra,* and the Missouri Court said of such a provision:

> "For the present purpose it will be assumed that the defendant attempted to do the act with which he is

charged, and that it lay in his power to compel, or coerce, Simons to withdraw from a lawful organization with which he was connected; because, by so doing, all discussion of matters merely preliminary to the main question herein involved will be avoided. * * * Here the law under review declares that to be a crime which consists alone in the exercise of a constitutional right, to wit, that of terminating a contract, one of the essential attributes of property, indeed property itself, under preceding definitions. Brought to the bar of a Court on such a charge, the accused would have been prejudiced, in so far as the criminality of the act charged is concerned; no question could there be made or admitted as to the quality of the act; that would have been settled by the previous legislative declaration, and it would only remain to find the fact as charged, in order to declare the guilt as charged. But the fact, as charged, as already seen, is not a crime, it will not be a crime, so long as constitutional guaranties and constitutional prohibitions are respected and enforced.

"If an owner, etc., obeys the law on which this prosecution rests, he is thereby deprived of a right and a liberty to contract or terminate a contract as all others may; if he disobeys it, then he is punished for the performance of an act wholly innocent, unless, indeed, the doing of such an act guaranteed by the organic law, the exercise of a right of which the Legislature is forbidden to deprive him, can, by that body, be conclusively pronounced criminal. We deny the power of the Legislature to do this; to brand as an offence that which the constitution designates and declares to be a right, and therefore an innocent act, and, consequently, we hold, that the statute which professes to exer. such a power is nothing more nor less than a 'legislative judgment,' and an attempt to deprive all who are included within its terms of a consti-

tutional right without due process of law. * * * Here, a non-trade union man, or non-labor union man, could be discharged without ceremony, without let or hindrance, whenever the employer so desired, with or without reason therefor, while, in the case of a trade union or labor union man, he could not be discharged, if such discharge rested on the ground of his being a member of such an organization. In other words, the Legislature has undertaken to limit the power of the owner or employer as to his right to contract with, or to terminate a contract with, particular persons of a class, and, therefore, the statute which does this is a special, not a general, law, and, therefore, violative of the constitution * * * The Legislature may legislate in regard to a class of persons; but they cannot take what may be termed a natural class of persons, split that class in two, and then arbitrarily designate the dissevered fractions of the original unit as two classes, and enact different rules for the government of each * * *

"The litigated statute is * * * in conflict with Section 1, Article 14, of the Federal Constitution aforesaid. forbidding that 'any State deprive any person of life, liberty or property without due process of law.'"

This is. in substance, the same principle asserted by this Court in Adair vs. United States with respect to the prohibitions of the Fifth Amendment, when this Court says (208 U S., pages 174-175):

"The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for

> whatever reason, to dispense with the services of such employee * * * In all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land."

In the statute under consideration, as noted by the Supreme Court of South Carolina, this "equality of right" between the employer and the employed is evidently and arbitrarily "disturbed"; while the former, in cases within its purview, can terminate the contract of employment, subject to no other responsibility than a civil suit if such termination be wrongful, the latter exercises the like constitutional right at the risk of fine and imprisonment. So in State vs. Goodwill, 33 W. Va. 179, 25 Am. St. Rep. 863, the Court says:

> "The property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands; and to hinder him from employing these in what manner he may think proper. without injury to his neighbor, is a plain violation of this most sacred property. It is equally an encroachment both upon the just liberty and the rights of the workman and his employer, or those who might be disposed to employ him, for the Legislature to interfere with the freedom of contract between them, as such interference hinders the one from working at what he thinks proper, and at the same time prevents the other from employing whom he chooses. * * * The enjoyment or deprivation of these rights and privileges constitutes the essential distinction between freedom and slavery; between liberty and oppression."

A multitude of other authorities might be cited to the same effect, but, it is respectfully submitted, that further citations are needless to sustain the position that the South Carolina statute is no less obnoxious to the Federal than it has been conclusively held to be to the State Constitution, or that any attempt to enforce its provisions by the arrest of persons in the situation of this plaintiff in error when the so-called "Arrest Warrant" was issued, constituted a crime against the United States under the laws forbidding peonage.

III. The Character of the Homicide.

The plaintiff in error was in his own dwelling house when the deceased entered, armed with a deadly weapon, and intending to deprive him of his liberty by violence or intimidation. The so-called "warrant" and the complaint on which it was founded embodied no charge of any crime known to the law; they did not even fulfil the requirements of the unconstitutional South Carolina statute, for they charged him only with some breach of a contract relating to agriculture and contained no averment that he had received "advances either in money or supplies." As hereinbefore noted, he had been induced by the witness Sol. Spires to remain in the neighborhood, so that his former employer might "send for him" when "he got ready." It appears without dispute that the "warrant" was issued and the seizure of the plaintiff in error attempted in pursuance of a criminal design to violate U. S. R. S. Secs. 1990 and 5526 and the express language of the Thirteenth Amendment. Under these circumstances, it is submitted that the plaintiff in error was fully justified in using reasonable force to protect his person, his liberty and his habitation, and that, in his situation, as shown by the evidence for the State, the firing of the fatal shot was not an unreasonable use of force for these purposes.

In Beard's Case, 158 U. S. 550, this Court held that the plaintiff in error was guilty of neither murder nor manslaughter for killing one of three brothers of his wife, who had come upon his premises intending to drive away a cow, the fatal blow having been struck under the following circumstances:

> "Beard ordered the Jones brothers to leave his premises. They refused to leave. Thereupon Will Jones, who was on the opposite side of the orchard fence, ten or fifteen yards only from Beard, moved towards the latter with an angry manner and in a brisk walk, having his left hand (he being, as Beard knew, left-handed) in the left pocket of his trousers. When he got within five or six steps of Beard, the latter warned him to stop, but he did not do so. As he approached nearer, the accused asked him what he intended to do, and he replied: 'Damn you, I will show you,' at the same time making a movement with his left hand as if to draw a pistol from his pocket; whereupon the accused struck him over the head with his gun and knocked him down."

This decision has been frequently approved by this Court.

Wallace vs. U. S., 162 U. S. 466;
Alberti vs. U. S., *Ibid.*, 499;
Rowe vs. U. S., 164 U. S. 546.

And also by many State Courts of the highest authority.

Thus in State vs. Brooks, 79 S. C. 144, 60 S. E. 518, 128 Am. St. Rep. 826, after referring with approval to the Beard Case, the Supreme Court of South Carolina says:

> "If one on his own premises, not a part of his habitation precincts, is not bound to retreat before the violent assault of a trespasser, for a greater reason one within the curtilage of his home is not bound to retreat."

In Brinkley vs. State, 89 Ala. 34, 18 Am. St. Rep. 87. the Supreme Court of Alabama, says:

> "As the defendant was in his own house and domicile, he was under no obligation to retreat. An assailed person is not bound to retreat from his own house to avoid killing his assailant, even though a retreat could be safely made * * * So, if he was, under the circumstances of the case, justified in ordering or expelling the deceased from the premises, he would be under no legal necessity to avoid the altercation by yielding the right in question as a mode of avoiding all apprehended violence."

In People vs. Lewis, 117 Cal. 186, 59 Am. St. Rep. 167, it was held:

> "A person assailed in his own house or premises can repel force by force, and is not obliged to retreat, but may pursue his adversary until he has secured himself from danger, and if, in a conflict between them, he happens to kill, the killing is justifiable."

In Palmer vs. State, 9 Wyo. 40, 59 Pac. 793, 87 Am. St. Rep. 910, the Court says:

> "It is not the law that one assaulted in his own house must retreat, provided he can do so without increasing his own danger; therefore he may lawfully resist, even to the taking of the life of his assailant. It is unquestionably true that the law does not permit anyone who is assailed to take life unless it is apparently necessary under the circumstances. But the two propositions are not in conflict. He must not take life except in cases of apparent necessity, but the law does not require that he shall avoid the necessity by retreating before his assailant. His house is his castle, and when it is invaded, he is deemed to be 'at the wall,' and no further retreat is required."

To this effect the Court cites:

2 Bishop's Criminal Law, 653;
Pond vs. People, 8 Mich. 177;
Erwin vs. State, 29 Ohio St. 188, 23 Am. Rep. 733.

These recognized principles of the law of self-defence have been applied in cases differing from the present only in that the homicide was far less clearly justifiable.

In Jones vs. State, 26 Tex. App. 1, 8 Am. St. Rep. 454, the deceased, a deputy sheriff in one county of Texas, attempted to arrest the defendant in another county under a warrant charging him with stealing cattle. Under the law of Texas, service of the *capias* in the other county was illegal. The deceased came to the house of the defendant at sunrise and "halloed." The defendant came to the door with a shotgun in his hand. On learning the purpose of the deceased and after reading the warrant, he refused to submit to arrest. The deceased then drew a pistol and both fired almost simultaneously. The evidence was conflicting as to which fired first. The deputy sheriff was killed, and this was held to be justifiable homicide.

In Maury vs. State, 68 Miss. 605, 24 Am. St. Rep. 291, the defendant, a negro, had a fist fight with a white man, and beat the latter. His antagonist and some ten or twelve of his friends came at night to the defendant's farm, called for him, and, as he did not come out, proceeded to search the premises. While engaged in doing this they were fired upon by several colored men who had gathered to protect the defendant, and two of the white men were killed. The evidence was conflicting as to whether the defendant joined in the firing. Like the present plaintiff in error, he was indicted and convicted of murder. The Court says of this conviction:

"It is inconceivable that the crime of murder is predicable of the facts disclosed by the evidence in this case. The time and place and the circumstances of the killing forbid any such conclusion as a verdict of guilty of murder. If the killing by the accused was not justifiable, as being in self-defense, it was no more than manslaughter, unless it could be believed that it (the killing) was referable, not to resistance of the illegal arrest, but to malice, and there seems to be little ground for that."

In Commonwealth vs. Delaney, 29 S. W. 616, the defendant had been kidnapped and was held in captivity, when a party of his friends broke into the house where he was detained in order to rescue him. A fight ensued between the rescuers and those holding him in detention, pistols being used on both sides. He came to the assistance of his friends, and, while shooting at one of his captors, accidentally killed another person. It was held by the Court of Appeals of Kentucky:

"Where a person is kidnapped, his friends may undertake his rescue and, if resisted, may use such force as is necessary to accomplish the same, and if, when attacked by the kidnappers, one of their number, in defending himelf, and without intending to do so, shoots and kills a person, the killing is excusable."

The Court said in this case that on the re-trial it would be proper for the trial Court to instruct the jury:

"That he, the said Delaney, his brother and brother-in-law and others embraced in this indictment and charged with this conspiracy, had the right to associate themselves together, and to agree and undertake the release of the said Henry Delaney from the forcible custody and detention of Taylor Olliver and Mrs. Olliver;

and that in such rescue, or attempted rescue, recognizing the right of the defendant Henry Delaney to cooperate with his kins people and friends for said purposes, and that said parties if resisted in said effort to so release and rescue Henry Delaney, might use, and the said Henry Delaney himself might use, such force as was necessary to accomplish the same, and that if, in such effort to so rescue him, they, or either of them, were fired upon by Taylor Olliver or his wife, either or both, then said parties, or either of them, might use such means as was necessary, or apparently necessary, for his own defense; and that if thereby, and without intending to shoot or kill Abbie Olliver, she was nevertheless shot and killed by accident, then the party or parties would be excusable for said killing under the law."

An extreme case wherein the right of self-defense against an attempted illegal imprisonment was recognized as justifying homicide is that mentioned on page 31 of the original brief, namely, State vs. Davis, 53 S. C. 150, 31 S. E. 62. In that case the defendant was found by the deceased stealing money from a drawer in the latter's shop. The deceased followed the defendant from his premises, and, as he refused to return the stolen money, grasped him and attempted to forcibly detain him, whereupon the defendant killed him. It appeared that the amount of money in the drawer was not sufficient to render the larceny felonious, so that the attempted arrest by a private person without warrant was technically illegal. In dealing with the right of self-defence under such circumstances, the Supreme Court of South Carolina says:

"A much more serious question arises where the circuit judge comes to discuss the right of a man to relieve himself from an illegal arrest. We cannot hold that the judge has stated the law of this State on this subject. The constitution sacredly guards the life, liberty

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> and property of the citizen, and our laws have always upheld the sacred boon of liberty. * * * We cannot agree that the Circuit Court Judge is correct in laying down the law so as to maintain a distinction between the right of a man to resist an injury to life or body and his right to resist an invasion of his personal liberty, for each of the three occupies the same plane."

And the Court quotes with approval Am. & Eng. Enc. of Law, Vol. 2, page 852, as follows:

> "An unlawful arrest vests no authority in the one arresting; hence one arrested may lawfully escape, if possible, and he has the right to use as much force as may be necessary to regain his liberty, even to the actual taking of life."

If the decision in Davis vs. State and the decision of the same Court submitted for review upon the writ of error in the present case are both sound law, it appears that in South Carolina a thief may kill with impunity the man from whom he has stolen if the latter attempt to detain him without technically sufficient authority for his arrest, but that a negro citizen, threatened with captivity without any warrant of law whatever and the intended victim of a criminal design to violate rights secured him by the Constitution of the United States, the Constitution of his own State and a valid statute of the Congress, must be put to death if he shall defend his liberty and kill his assailant in the resulting affray.

IV. The Rulings of the Lower Courts and the Assignments of Error.

(1) It appears from the Record that upon the close of the testimony the defendant's counsel called the attention of the trial Court to the facts that the statute of South Caro-

lina, on which he so-called "Arrest Warrant" was based, and consequently the warrant itself, and the attempt to execute it by arresting the plaintiff in error, were all in contravention of the Thirteenth and Fourteenth Amendments and of the statute against peonage (Record, pages 50, 51, 56, 57), and, on these grounds, in view of all the evidence, moved that the jury be instructed to acquit the present plaintiff in error. The trial Court not only overruled this motion, but declined to hear argument in support of it, after its purport had been stated, saying (Record, page 51):

> "It is not necessary to argue that point further; even if you were to establish the fact that the warrant were null and void, or even if the man had no warrant at all, it would not be competent for the Court to direct a verdict in favor of the defendant, Pinkney Franklin, and the motion is refused."

It will be noted that, in this ruling, the Court ignored the difference between an arrest which is merely irregular or unauthorized, and an arrest which constitutes, in itself, a grave crime, as did that attempted by the deceased in this case under the provisions of U. S. R. S. Section 5526. In what are called in the Record the Defendant's Fourth and Seventh "Exceptions" (Record, pages 59, 60), this ruling and the above-quoted language of the trial Court used in the presence of the jury were assigned as error, and the Federal questions involved in these assignments were specifically raised on the appeal to the Supreme Court of South Carolina (Record, page 60). These rulings of the trial Court were upheld by the Court of Error (Record, page 3), and all the Federal questions are clearly covered by the Fourth Assignment of Error to this Court (Record, page 10).

(2) In his charge to the jury the trial Judge defines the right of self-defence as follows (Record, page 53):

"Where a person is without fault in bringing about the difficulty, where they are in danger of losing their lives or of sustaining serious bodily harm, and where there are no other probable means of escape save to kill the assailant, then the law says they have a right to kill and that it is self-defence. If the testimony satisfies you that the defendants were without fault in bringing about the difficulty, that they were in danger of losing their lives or of sustaining serious bodily harm, and that there was no other means of escape but to kill, then that makes out a case of self-defence, provided that a person of ordinary reason and firmness would have done the same, and provided that the same impression would have been created in the mind of a person of ordinary firmness and reason; that is, that they were in serious danger, and that there was no probable means of escape. If they establish that plea, then they are entitled to a verdict of not guilty. If any of the facts necessary to make out their plea are not established, then their plea is not established and cannot avail. Each and every one of the facts necessary to the plea must be established."

This portion of the charge forms the ground of the defendant's Sixth "Exception" (Record, page 60), and the charge is expressly approved in this respect by the Court of Error (Record, page 4). It will be observed that, in this portion of the charge and its review the right of the defendant to his personal liberty as secured by the Thirteenth Amendment, the right of the defendant under the Fourteenth Amendment to the same protection for his individual freedom which may be accorded to other citizens of South Carolina under Article 1, Sections 5 and 24, of the Constitution of that State (Record, page 50), and the fact that the attempt to seize and carry away the defendant, which

he resisted, constituted a crime against the United States, were all studiously ignored by both Courts. The materiality of these several circumstances, as affecting the propriety of the instruction, obviously constitutes a very important Federal question, and this question is presented to this Court by the second paragraph of the Fourth Assignment of Error (Record, page 10).

(3) The jury having requested some further instructions, the Court charged them as follows (Record, pages 55-56):

> "A constable stands on the same footing as a sheriff; if a warrant is placed in his hands to make an arrest, it becomes his duty to make that arrest, and the law clothes him with the power to do all that is necessary to make the arrest; you see then that you will have to enquire as to whether it was necessary for him to go into the house or not. Ordinarily if a constable goes up to a man and says: 'I arrest you,' that is usually as far as he has to go, and that is all that is necessay if the other party submits to the arrest. The other party has a right to ask for the reason for this arrest and his authority; if he has a warrant, it then becomes his duty to exhibit the same; then, if the party submits, that is as far as the officer has a right to go. If he refuses to submit to the arrest, then the officer has a right to go to whatever length is necessary to make him submit. If a man is in his own house, he has the right to go to that house and go through the same process; he has the right to go in the house, if it is necessary; he has the right to call the person out, and, if he refuses to come out, then he has the right to go in the house. If the door is open, he can go in; if the door is closed, he can demand that it be opened, and, if that is refused, he can break down the door. He represents the majesty of the law and may override all resistance. It uses

whatever force is necessary and stops at nothing short of accomplishing its purpose. If it is necessary for them to pull down the house, then they have the right to do that. If an arrest is resisted and active resistance is resorted to, then the officer still has the right to use, as a matter of fact, whatever force is necessary to accomplish his purpose."

Juror Wannamaker asks: "Has a constable or officer of the law the right to enter a house without first stating his mission?"

His Honor: "Not unless it is necessary."

Juror: "It is not necessary for an officer to call to the party on the inside and state his mission."

His Honor: "I should think not, Mr. Wannamaker: common prudence would demand that he ask admission, but he has the right to demand admission."

Juror: "If he received no response to his call he would have the right to enter."

His Honor: "Yes, sir; or if the house were closed and he received no response and he has good reason to believe that the refusal to answer amounts to a resistance of his authority, then he has the right to force an entrance. If admission is refused he has a right to force admission."

This additional charge was made the basis of the defendant's eighth "exception" (Record, page 61), and was approved in terms by the Court of error (Record, pages 4-5), and the accuracy of these rulings is submitted specifically by the third assignment of error to this Court (Record, pages 9-10).

It is obvious, and will hardly be disputed, that this instruction as to the powers and duties of a peace officer executing a warrant, presupposes that the warrant is a *legal* one, and

that the officer attempts to execute it in the discharge of *his lawful duty.* If the warrant of arrest was, not merely irregular or erroneous, but wholly void and a nullity under the Thirteenth Amendment and U. S. R. S., Sec. 1990, and if the attempted arrest of the defendant constituted a crime against the United States, under U. S. R. S. 5526, and also infringed the rights accorded other citizens of South Carolina under Article 1, Sections 5 and 24 of the Constitution of that State, so that its consummation by an officer of the State would deny the defendant his rights under the Fourteenth Amendment, then, in ignoring all these circumstances, this part of the charge was gravely erroneous to the prejudice to the present plaintiff in error, and the Federal questions thus involved are evidently before this Court under the third assigment of error (Record, page 9).

Two other errors are assigned (Record, *Ibid.*), involving the construction of Article 11 of the South Corolina Constitution of 1895 and of the Act of Congress approved June 25, 1868 (15 Stat., page 73): also the refusal of a continuance, under the circumstances stated on pages 15, 16 of the Record, as a denial of "due process of law" to the plaintiff in error (Original Brief, page 12), so that the approval of this ruling by the Court of Error (Record, page 2) is covered by the second pragraph of the fourth assignment of error (Record, page 10). These three alleged errors have not been discussed in this brief, since the arguments in support of them are fully presented and many authorities cited in the original brief, pages 5 to 18; they are, however, in no wise waived.

V. Conclusions.

The plaintiff in error respectfully submits:

First. That Section 357 of the Criminal Code of South Carolina of 1902, under which it was sought to arrest this

plaintiff in error, being unconstitutional and void under Article 1, Sections 5 and 24 of the Constitution of that State,

Ex parte Hollman, *supra,*

the so-called "Arrest Warrant" and all other proceedings taken under it were wholly void, and conferred no authority on any one to make the arrest, the warrant and complaint moreover showing no offense.

Ex parte Siebold, *supra.*

And, it being the recognized law of South Carolina that:

> "An unlawful arrest vests no authority in the one arresting; hence one arrested may lawfully escape, if possible, and he has the right to use as much force as may be necessary to regain his liberty, even to the actual taking of life"—
>
> State vs. Davis, *supra;*

the capital punishment of this plaintiff in error for the homicide charged in this case would, under all the circumstances shown by the Record, amount to a denial by the State of South Carolina to him, "a person within its jurisdiction," of "the equal protection of the laws," and consequently a violation of the Fourteenth Amendment.

Second. That Section 357 of the Criminal Code of South Carolina, above mentioned, subjects the plaintiff in error and others in like case with him to involuntary servitude otherwise than as a punishment for crime, and, as such, is void under the Thirteenth Amendment; and its enactment constituted an attempt on the part of the State of South Carolina to deprive certain persons of liberty without due process of law; it was therefore void also under the Fourteenth Amendment.

Ex parte Hollman, *supra;*
Toney vs. State, *supra;*
Ex parte Drayton, *supra.*

Third. That any attempt to enforce the statute in question would constitute a direct violation of U. S. R. S. Sec 1990 and a crime under U. S. R. S. Section 5526, so that the so-called "Arrest Warrant" was not merely a nullity, but a badge of guilt on the part of those procuring or seeking to execute it; and the plaintiff in error, in resisting arrest, was defending the liberty assured to him by the Thirteenth and Fourteenth Amendments and U. S. R. S. Sec. 1990, not only against mere lawless violence, but against a criminal conspiracy.

Clyatt vs. U. S., *supra;*
Peonage Cases, *supra,* 123 Fed., page 684.

Fourth. That, upon the evidence for the State contained in this Record, assuming that it was throughout believed by the jury, and assuming also that none of the evidence for the defence was so believed, except in so far as it might aid the prosecution, there was no sufficient evidence for the jury to find beyond a reasonable doubt, or even to find at all, that the plaintiff in error was guilty of any crime in defending himself against the lawless and criminal aggression to which he was subjected; and, therefore, in overruling summarily and almost contemptuously his motion for a verdict of not guilty (which amounted to a demurrer to the evidence), the trial Court, in effect, ignored the plaintiff in error's rights under the Thirteenth and Fourteenth Amendments and the statutes forbidding peonage.

Beard vs. U. S., *supra;*
State vs. Brooks, *supra;*
Brinkley vs. State, *supra;*
Jones vs. State, *supra;*
Commonwealth vs. Delaney, *supra;*
State vs. Davis, *supra.*

Fifth. That, in his further charge to the jury, the Trial Judge assumed himself and necessarily led the jury to assume that the deceased was attempting to execute a lawful warrant as part of his legitimate official duties, thereby again ignoring the constitutional rights of the plaintiff in error and the unlawful and criminal character of the decedent's acts; and the same error, although less obviously, no less indisputably underlies the instruction originally given as to the law of self-defence; and that these errors gravely prejudiced the plaintiff in error, not only by tending to prevent his acquittal, but by increasing the probability that he might be (as he was) convicted of murder instead of manslaughter.

Maury vs. State, *supra.*

For all these reasons, an appeal to the Court of last resort in the State having proved futile, it is submitted that the plaintiff in error is entitled to a reversal of the judgment which condemns him to death for resisting arrest under a void warrant professedly based upon a void law and when the attempted arrest was a grave crime against the United States.

Finally, it seems proper to call to the Court's attention the danger of oppression and denial of constitutional rights to the class of citizens which includes this plaintiff in error, if they are forbidden, on pain of death, to defend themselves against similar violent attempts to reduce them to virtual slavery. In the language of Judge Brawley in *Ex parte* Drayton, *supra* (153 Fed., page 995):

> "The petitioners in this case are of the poorest and humblest class of citizens. It would be a mockery of justice to say to them: 'You must carry your appeal from this unjust judgment, first, to the Circuit Court, then to the Supreme Court of the State, and if necessary, by writ of error, to the Supreme Court of the United States.'"

If these poor people are prohibited, under penalty of death, to defend their constitutional rights when violently invaded in remote and isolated communities, in view of their ignorance, friendlessness and poverty, it is little better than a mockery to tell them that judges are ready and Courts are open to release them from unlawful restraint. It seems significant that the same Court which, in Davis vs. State, used the language above quoted with reference to a thief caught in the act, should say of the so-called "Arrest Warrant" in this case (Record, page 5):

> "The object is to carry into execution what the peace of society demands. This wholesale objection to submission to a warrant of arrest is freighted with disaster to the community and there should not be a hesitance on the part of good citizens to assist in preserving the peace and good order of society. The Circuit Judge was evidently influenced by such considerations and made no mistake in what has just been stated to have been his position."

To this suggestion, we may say with Judge Brawley (153 Fed. page 996):

> "The one sufficient answer to the argument is that the question of human liberty is not one of merely local concern. It rests upon the Constitution of the United States, and no duty rests more imperatively upon its Courts than to be watchful of the constitutional rights of its citizens, and to construe liberally all the provisions for the security of persons and the equality of rights, which are the foundation of free Government."

CHARLES J. BONAPARTE,
Counsel for Plaintiff in Error.

IN THE
UNITED STATES SUPREME COURT

PINK FRANKLIN,
Plaintiff in error,

against

THE STATE OF SOUTH CAROLINA,
Defendants in error.

ON WRIT OF ERROR TO THE SUPREME COURT OF SOUTH CAROLINA.

No. 164.

Brief of Jacob Moorer and John Adams on Behalf of Plaintiff in Error.

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1 STATEMENT OF THE CASE.

The plaintiff in error was defendant below and was indicted together with his wife Sad Franklin for the murder of one Henry E. Valentine on the twenty ninth day of July 1907. This case came on to be heard at the September term of the Court of General Sessions for the County of Orangeburg, South Carolina before his Honor J. C. Klugh, Circuit Judge. At the sounding of the docket and the calling of the case and before the defendants were arraigned counsel for the defence moved to quash and set aside the

indictment on divers motions fully set out in the record of the case. See record page 12-14. These motions were all overruled and then the defendants counsel moved the court to continue the case on the affidavit set out in the record page 15 and subscribed to by John Adams one of the defendant's attorneys. This motion was also overruled and the case ordered to trial September ninth, 1907. When the State rested its case, the defence then moved the Court to direct a verdict of not guilty, upon both state and federal grounds as to both defendants. This motion was also overruled. The Jury having found Sad Franklin not guilty and Pink Franklin guilty, His Honor the Circuit Judge sentenced Pink Franklin to be hanged October 25, 1907.

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The defendant excepted to the ruling, sentence and judgment of the trial Court and appealed to the Supreme Court of the State of South Carolina for a reversal of the decision, sentence and judgment of the trial Court. The Supreme Court of the State in passing upon the federal and State question raised in the court below affirmed the ruling and judgment of the trial Court and the defendant now comes upon his writ of error to the Supreme Court of the United States for a review and reversal of the decision and judgment of the Supreme Court of the State of South Carolina.

Assignment of Errors.

Now comes the above named Pink Franklin, plaintiff in error and files herewith his petition for a writ of error and says that there are errors in the record and proceedings in the above entitled cause and for the purpose of having the same reviewed in the Supreme Court of the United States makes the following assignments.

3

The Supreme Court of the State of South Carolina
4 erred in holding and deciding that Art 2 known as the suffrage provision of the Constitution of 1895 of the State of South Carolina is valid. The validity of said Art. was denied and drawn in question by the plaintiff in error herein on the ground that said Art. is repugnant to the Constitution of the United States and in contravention thereof.

The said errors are more particularly set forth as follows.

I.

That the said Art. 2 known as the suffrage provision of the Constitution of 1895 of the State of South Carolina, did not abridge the rights, privileges and immunities of citizens of South Carolina or this plaintiff in error as such citizens, as guaranteed and provided for by the act of Congress approved the 25th day of June 1868, (15th Statutes at Large, page 73.)

II.

That the said Supreme Court erred in holding and deciding that the act of Congress approved the 25th day of June 1868 is wholly inapplicable to our Con-
5 stitutional provisions in regards to juries.

III.

That the Said Supreme Court erred in affirming the following charge of the Court below: "if the door is closed he can demand that it be opened and if that is refused he can break down the door. * * * A constable stands on the same footing as a Sheriff. Juror Wannamaker asks 'Has a Constable or officer of the law the right to enter a house without first stating his mission? His Hon. "Not unless it is necessary." Juror, Is it not necessary for an officer to call to the party to the inside and state his mission?

His Hon., I should think not Mr. Wannamaker. Juror, If he receives no response to his call would he have the right to enter? His Hon. Yes sir or if the house were closed and receives no response and he has good reason to believe that the refusal to answer amounts to a resistance to his authority then he has a right to force an entrance. "

IV.

That the said Supreme Court erred in holding and deciding, that in overruling the motion to direct a verdict of not guilty, on the ground, that the warrant under which the deceased Henry E. Valentine attempted to arrest the petitioner in error was unlawful null and void, that the trial Court committed no error.

And also in holding that this petitioner in error was not denied his rights under the Constitution of the State of South Carolina of 1895 Art One, sec. five, and under the fourteenth and fifteenth amendments to the Constitution of the United States.

For which errors your petitioner herein prays that the said Judgment of the Supreme Court of South Carolina dated March seventeenth. 1908, be reversed and remanded for such further adjudication as may be just, right and equitable.

JACOB MOORER &
JOHN ADAMS,
Attorneys for Petitioner.

ARGUMENT.

8

The plaintiff in error desires this Court to review and decide whether the State of South Carolina, violated the constitution and laws of the United States, in making and enforcing certain laws contained in the Constitution of 1895 of South Carolina and relating to the organization, selecting and summoning and qualifications of Grand and Petit Jurors in that State. It is his contention that the State of South Carolina has made such violation and we now show to the Court the manner in which it was done.

The Act of Congress approved June 25th, 1868 contains the following:

"Whereas the people of South Carolina, North Carolina, Louisana, Georgia, Alabama and Florida have in pursuance of the provisions of an Act entitled An Act for the more efficient government of the Rebel States, passed March 2nd, 1867 and the Acts supplimentary thereto, framed constitutions of State governments which are republican, and have adopted said constitutions by large majorities of the votes cast at the elections held for the ratification or rejection of the same.

9

Therefore be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled that each of the states of North Carolina, South Carolina, Louisana, Georgia, Alabama and Florida shall be entitled to representation in Congress as a state of the Union when the Legislature of each state shall have duly ratified the amendment to the constitution of the United States proposed by the thirty ninth Congress and known as Art 14, upon the following fundamental conditions:

That the constitutions of neither of said states shall ever be so amended or changed as to deprive any

citizen or class of citizens of the United States of the right to vote in said state who are entitled to vote by the constitution thereof herein recognized, except as punishment for such crimes as are now felonies at common law." (15 statutes at large page 73.)

Sec. 2 Art. VIII of the constitution of 1868 of 10
South Carolina is set out in the record, page 14, to which we direct the attention of the Court.

The material parts of the constitution of 1895 of the State of South Carolina, which are questioned, are as follows:

Art. Two Sec. 4. The qualification for suffrage shall be as follows: "(a) residence in the state for two years, in the County one year, in the polling precinct in which the elector offers to vote four months, and the payment six months before any election of any poll tax then due and payable: (b) any person who shall apply for registration after January first, 1908, if otherwise qualified shall be registered: Provided, That he can both read and write any section of this constitution submitted to him by the registration officer or can show that he owns and has paid all taxes collectable during the previous year on property in this state assessed at three hundred dollars or more."

Now it is obvious that the requirement for suffrage 11
under Art. Two of the constitution of 1895 for South Carolina is quite different from the qualification for suffrage in the constitution of 1868 for said state and is such qualification as is prohibited by the Act of Congress June 25th, 1868. It is to be remembered that the constitutionality of the said Act has not been questioned by the Defendant in Error, the State Court only holding that it was inapplicable to our constitutional provision for juries.

It is the mind of Counsel however that a brief word as to the constitutionality of the Act should be added, that stronger emphasis may be laid on the injustice, the grossness of the error committed by the Supreme Court for the State in disregarding the injunction contained therein and denying this plaintiff in error the immunity granted him therein.

The constitutionality of the Act herein referred to is sustained by numerous decisions of this Court. 12
Texas vs. White, 7 Wall., 731. Harte vs. White, 13 Wall, 648. Art. IV. Sec. 4 constitution of the United States.

Now our conclusion on this point is this:

The State of South Carolina having adopted a constitution in April, 1868, and Congress having approved that constitution June, 25, 1868 with a prohibition that this constitution shall never be so amended nor changed as to deprive any citizen or class of citizens of the United States of the right to vote in said state who are qualified to vote by the constitution thereof herein recognized, except as a punishment of such crimes as are now felonies at common law, it seems clear to us, therefore, that the constitution adopted in April, 1868 by the State of South Carolina is the free and voluntary act of that State and that the restriction applied to that constitution by the act of Congress, approved June 25, 1868, is only such a restriction as Congress deemed necessary to make, in order that it might guarantee to South Carolina a republican form of government.

The passing of the act herein mentioned can not 13
be taken to be strained or passed without necessary power. The Act in question must, therefore be held to be constitutional and valid, under Act IV Sec. 4, United States Constitution.

And further, the remedy for the re-establishment 14
of a republican form of government in those states that had seceded must be found in the guaranty clauses of the constitution of the United States. When for any reason, as for instance, when the state has passed what has been termed an Ordinance of Secession, there ceases to be a government under the constitution of the United States, the "guaranty" on this section attaches and the United States becomes obligated to provide for it a republican form of government. To see this distinctly, we are to bear in mind that our state governments are recognized by the National, the same as are those of foreign nations; and that the National government may refuse to recognize the government of a state, or may withdraw recognition already given. Thus in Rhode Island, in the time of Dorr,s Rebellion, there were two governments, each of which claimed to be the lawful one, and the United States recognized one of them and rejected the other. Luther vs. Borden, 7 Howard U. S. 1. Bishop's Criminal Law, Vol. 1, Sec. 162.

Was The Plaintiff In Error Denied Due Process of Law As Guaranteed By The Fourteenth Amendment to The Constitution of The United States? 15

The plaintiff in error contends that he was denied due process of law as guaranteed by Art. 1, Sec. 5 of the constitution of 1895 of South Carolina and the Fourteenth Amendment to the constitution of the United States, when in this case he was tried by a jury drawn pursuant to an Act entitled "An Act Relating to the Selecting, Drawing and Summoning of Jurors in the Circuit Courts of this State" and approved the 7th day of Feb., 1902.

The principal part of the Act herein questioned is: Sec. 1, which reads as follows: "Be it enacted by the 16
General Assembly of the State of South Carolina that the county auditor, the county treasurer, and the clerk of the Court of Common Pleas of each county in this State shall perform the duties hereinafter set forth." Section 2 says, "That the said county auditor, county treasurer, and clerk of the Court of Common Pleas of each county shall immediately after the passage of this Act, and thereafter in each month of December of this and each succeeding year, prepare a list of such qualified electors under the provisions of this constitution between the ages of 21 and 65 years and of good moral character, of their respective counties, as they may deem otherwise well-qualified to serve as jurors."

This statute is unconstitutional, because, after pre- 17
scribing the qualifications for Jurors as set forth in Art. 5, Sec. 22 of the constitution, it goes on and gives the jury commissioners Arbitrary Powers to fix the qualification of jurors. Under this statute, the jury commissioners deprive any person or class of persons from being jurors whom they do not deem otherwise well qualified to serve. For, under this statute no one is to be a juror, though qualified under the constitution of 1868 and 1895, except such as they may deem otherwise well qualified.

Now, what it takes to cause the jury commissioners to DEEM A PERSON OTHERWISE WELL-QUALIFIED TO SERVE AS JURORS is not expressed, and this is where the wrong and constitutional violation come in. Laws ought to be clear, 18
difinite and fixed. They are not to be left secreted and floating in the minds of jury commissioners. Such legislation is clearly inimical to the principle

of justice whether such jury commissioners be friends or foes to the party on trial.

If the State of South Crrolina intends to rely upon the validity of the constitution of 1895, then it becomes seriously important, to note, that the people who adopted that constitution never intended to allow the legislature to fix the qualification of jurors. This is very evident because such qualifications are prescribed by Art. 5, Sec. 22 of the constitution of 1895. It must, therefore, be clear that the legislature could not take away nor add anything to the qualifications of jurors under that constitution. Now in the case of Goodale vs. Sowell, 62, S. C., 516, the Supreme Court of the State of South Carolina, having under consideration a similar statute, said, "The Act was not only inimical to the constitution, for the reasons here before stated, but are likewise unconstitutional in that it conferred upon the commissioners, in terms expressed upon the face thereof, arbitrary powers of discrimination." See also, Hill vs. City Council, 59, S. C. 415. Yick Wo vs Hopkins, 118 U. S. 356. 19

If it be contended that the legislature has power under the constitution of 1895 of South Carolina to fix the qualifications of jurors, then we assert that it is an established principle of constitutional law that the power conferred upon the legislature to enact laws can not be delegated by that Department to any other body or authority. 3 Am. and Eng. Ency. 698. State vs. Young 29, Minn., 474. 20

Art. 1, Sec. 25 of the constitution of this state providing for trial by jury, contemplates a lawful jury, jury drawn pursuant to a constitutional statute, otherwise, this constitutional provision is violated and the enforcement of such a law, as the one herein questioned is a denial of due process of law. No state shall make or enforce any law which shall

abridge the rights, etc. The prohibition of the 14th Amendment extends to all acts of the state, whether through its legislative, its executive, or its judicial authority. Scott vs. McNeal, 154 U. S. 34: Ex parte Va. 100, U. S. 339.

We direct your Honor's attention to the interpretation and to the definition of due process of law 21
as is given by the Supreme Court of S. C. in the case of Stehmeyer vs. City Council 53, S. C. 281. It is held in that case that due process of law means the statute law and the common law adopted in this state at the making of this constitution. Now we submit that the old common law principle, "Jure delegare non est delegare" was the common law principle at the adoption of the constitution of 1895. South Carolina violated this principle when she gave the jury commissioners power to prescribe qualifications for jurors. And when she applied this law to the case of your plaintiff in error, in organizing and summoning jurors, she denied him due process of law in that the law of the land was not applied.

Now on the 4th day of December, 1895, the State of South Carolina adopted a new constitution which 22
amended and changed the suffrage provisions of the constitution of 1868 of said state, contrary to and in violation of the act of Congress approved June 25, 1868. We submit that the effect of this change and gross violation of law was brought home to the great injury of this plaintiff in error, when the state of South Carolina adopted the clause of her constitution of 1895 which required the same qualification for jurors as are required for electors, "each juror must be a qualified elector under the provisions of this constitution, between the ages of 21 and 65 23
years and of good moral character." Article 5, Section 22.

Those who could not qualify as electors under this amended and changed constitution were not eligible for jury duty, and in this way the great majority of citizens of the state, especially of the class to which the plaintiff in error belongs. who were and are well-qualified to serve as jurors, were denied and deprived of that right and privilege.

Was The Plaintiff in Error Denied Due Process of Law in The Refusal of His Motion For a Continuance?

It is contended here that in affirming the ruling of 24
the Trial Court on the motion set out at page 15 of the record, the Supreme Court of the State committed an error so gross as to amount in law to a denial by the State of Due Process of Law. Our reasoning upon this point is as follows: Art. 1, sec. 5 of the constitution of South Carolina, says: "The privileges and immunities of the citizens of this state and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."

It is held in Stehmeyer vs. City Council, 53 S. C., 281, that, "Due process of law means the common law and the Statute laws existing in this State at the adoption of our constitution."

The question is then, has the State of South Caro- 25
lina deprived your petitioner Franklin of a right granted him under her constitution, her statutes or through her common law principles? and if she has, then she has violated the 14th amendment to the constitution of the United States.

Now that the 14th. amendment protects your petitioner against such an abuse on the part of the 26
State, we draw to the attention of the Court its own conclusion on the point. "The 14th. amendment did not radieally change the whole theory of the relation of the state and the Federal governments to each other nor of both governments to the people. The same person may be at the same time a citizen of the United States and a citizen of the State. Protection to life, liberty and property rests primarily with the states and the amendment furnishes an additional guaranty against any encroachments by the states upon those fundamental rights which belong to citilenship and which the state governments were created to secure. The privileges and immunities of citizens of the states are indeed protected by it but those are privileges and immunities arising out of the nature and essential character of the National government and granted or secured by the constitution of the United States." Ex Parte Kemler 136 U. S. 436. Slaughter House Cases 16 Wall, 36. State vs. Cruikshank 92 U. S. 542.

"The duty of the State is to render to every person 27
accused of crime Due Process of Law, which includes not only proper legislation, but the orderly and undisturbed working of the machinery of justice. Until it-has done its perfect work, the administration of Due Process, which in a case like this cannot be enjoyed except by the regular and orderly working of judicial procedure, Due Process is not afforded by the State. The very words of the 14th amendment inevitably utter a command that the State shall afford Due Process to the citizen, and the right of privilege so guaranteed necessarily carries with it and includes in it the right, privilege or immunity to enjoy freedom and exemption from lawless assault. Ex. Parte

Riggins, 134 Fedk Rep. 416–419. Orr vs. Gillman, 183 U. S. 278, 286. U. S. vs. Moore 129 Federal Rep. 630. Ex Parte Riggins 134, Fed. Rep. 404.

It is a settled principle of this Court that when the 28
Lex Loci has been faithfully and impartially applied by the state in the trial of a cause that the Due Process clause of the constitution of the United States is satisfied· Hertado vs. The People of California. 110 U. S. page 516 Now since it is the contention here that the law of the land was not applied in the trial of the cause of your plaintiff in error, we proceed now to set out what was the law of the land applicable to his cause and show the respect in which it was misapplied.

Sec. VIII Art. 1 of the constitution of South Carolina contains the following: "The accused shall have 29
compulsory process for obtaining witnesses in his favor and to be fully heard in his defence by himself, by his counsel or both."

Art. V Sec. 30 directs that a Coroner shall be elected for the respective Counties of the State.

Sec. 712 of the Criminal Code for South Carolina says, "The testimony of all witnesses examined upon an inquest shall be taken down in writing by the Coroner."

Sec. 711 Criminal Code says, "The witnesses examined shall be sworn."

Sec. 889 of the Civil Code says, "Every Coroner shall keep a book to be called the Coroner's Book of Inquisitions, into which he shall copy all inquests found within his County together with the evidence taken before the jury and all proceedings had before 30
and after their finding."

Sec. 866 of the Civil Code says, "He shall keep an office at the Court house in his County which shall have proper fixtures and in which he shall keep his

book of inquisitions which shall be public property and shall be turned over to his successor in office."

It is held in the State vs. Jones, 29 S. C. 201, that "Testimony of witnesses may be contradicted by what he swore before the Coroner at the inquest." 31

This, may it please the Court, is the law of the land, let us now determine whether or not it was faithfully and impartially, or so far as that is concerned applied at all, to the cause of your plaintiff in error upon his trial.

Referring now to the affidavit found at page 15 of the record, the following was shown the Court in urging it to continue our case and not hurry us to trial without a chance to prepare a proper and just defence to protect ourselves against the charges preferred.

This affidavit to which we direct your Honor's attention shows the following:

That 14 days before the accused was brought to bar that his Counsel and the Clerk of the Court made a diligent search in the Clerk's office for the original testimony taken at the inquest and it could not be found 32

That the Counsel went into the Coroner's room to read the testimony taken at the inquest from his book and that it was not to be found there.

That on the morning before the case was called the Counsel took A. W. Tharrin, Deputy Sheriff, into the Grand Jury room where it was claimed that the Coroner kept his records and that no book or record containing this testimony was there to be found.

That the record was found in the Solicitor's office written in short hand and that the party who took the testimony was out of town. 33

As evidence of the character of this testimony we call attention to the language used by the Solicitor in replying to the argument for continuance at page 16 of the record.

"I handed him the paper in the case and told him at the time that I did not know if he could read the writing or not that it was written in a kind of short hand or running hand * * * * Your Honor will readily see that the record is written as I have stated and I doubt if your Honor can read it." Now it is necessary to our conclusion, that a little history of the case shall be given at this point.

From the testimony of Pink Franklin and Tony 34
Jerry the record sustains the assertion that just after the killing the community was terrorized in a most brutal and savage manner. Defenceless men and women were beaten most brutally and carried off to jail mercilessly. Tony Jerry testified as follows: Q. What did they bring you to jail for. A. Don't know what they brought me for, I had nothing to do with the killing. Q. Where were you when that whipping took place out there. A. I was home, I was in jail when the whipping was done at Cope. I only got one lick.

Now from the citations set out above we conclude and urge that the law of the state giving to your plaintiff in error the right to be heard and to be fully heard by himself, his Counsel or both and making him immune to the abridgment of his rights under the South Carolina Constitution was in no manner 35
applied but in every respect disregarded.

The accused comes into Court entitled to every reasonable doubt and this doubt is a fact to be determined by the jury. The opportunity to make this doubt appear in the minds of the jury must be safeguarded by the state. Now doubts arise in the

minds of jurors from conflicting and contradictory statements of witnesses. The very testimony com- 36
petent for this purpose under the laws of South Carolina, State vs. Jones, 29 S. C., 201, on a trial for murder is this Coroner's testimony. Now, having passed laws for the filing of this testimony by the Coroner, and fixing the place in which it is to be kept, and setting the time after the taking when it was to be filed and stating through her Supreme Court the purposes for which it was to be used and giving an accused the right to prepare himself upon it and so use it, and then taking this right away from him as was done in this case she certainly did not apply the law of the land and so misapplying and stubbornly refusing to apply she has deprived us of our rights as guaranteed under the 14th amendment.

The State of South Carolina through her Coroner neglected, refused and failed to obey the clear and unquestionable mandate of the law as set out in the statutes of the State on this point. This is significant when taken in connection with the fact that the plaintiff in error was hurried out of the County to the State Penitentiary, away from his friends and 37
associates and those who would naturally be interested in his defence and deprived of all opportunity to prepare it. In view of the circumstances unveiled by the testimony in this case it is not possible to escape the conclusion that the State of South Carolina was determined to prevent the Plaintiff in Error from making his defence. This case should have been continued on the showing made and there was no reason why it should not have been continued and none was offered. This refusal of the trial Court to continue this case was a plain denial of natural justice, such a justice as is comprehended by the 14th amendment to the Constitution of the United States.

and more than all, of all fair dealings. These questions were pressed upon the Supreme Court of the State of South Carolina, but to no avail. That Court having affirmed the judgment of the trial Court and 38
therefore erred in all and singular the particulars herein set out, Wherefore The Plaintiff In Error insists this his writ of error that the judgment of the Supreme Court of the State of South Carolina be reversed and the principles of natural justice and trial by jury, which has come to us through many generations and centuries of continued development to our present and exalted station of an enlightened civilization, be maintained and vindicated.

IN AFFIRMING THE RULING OF THE TRIAL COURT ON THE MOTION TO DIRECT 39
VERDICT OF NOT GUILTY AS TO MURDER SET OUT AT PAGE 56 OF THE RECORD, DID THE SUPREME COURT ERR, BY DENYING THIS PLAINTIFF IN ERROR HIS RIGHTS UNDER THE 13TH AND 14TH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES AND UNDER SEC. 1990 OF THE REVISED STATUTES OF THE UNITED STATES OF 1901 AND KNOWN AS THE PEONAGE STATUTES?

Now to determine what rights were denied by the refusal of this motion, it is necessary to view the circumstances under which the homicide was commited, as revealed by the record in the case. 40

At the time the fatal shot was fired, the deceased Henry E. Valentine was attempting to arrest this Plaintiff in Error under the following warrant.

" I, J. N. Valentine, Magistrate, in and for the said County and the said State. To any lawful Constable: 51

Whereas, Complaint upon oath has been made unto me by J. D. Thomas that at Thomas Place in the County and State aforesaid on the 22nd of May 1907, one Pink Franklin violated and broke an agricultural contract.

These are therefore to command you to apprehend the said Defendant, Pink Franklin and bring him before me to be dealt with according to law.

Given under my hand and seal, this 25th day of May one thousand nine hundred and seven.

J. I. Valentine. Magistrate. (L. S.)

AFFIDAVIT.

Personally appeared before me, J. I. Valentine, a 42
Magistrate of said County and State, J. D. Thomas who being duly sworn said: On the the 22nd day of May 1907, one Pink Franklin did wilfully and knowingly violate an Agricultural Contract given to deponent for year 1907, all of which is against the peace and dignity of the State of South Carolina.

J. D. Thomas.

Sworn to before me this 25th day of May 1907.

J. I. Valentine, Magistrate.

I hereby appoint H. E. Valentine a special Constable to execute the within warrant.

J. I. Valentine, Magistrate."

See Record page 17. Also for testimony pages 28, 29, 40, 41.

Pinkney Franklin being duly sworn testifies as 43
follows:

Q. Your name is Pinkney Franklin?

A. Yes sir.

Q. Do you remember the night in the latter part of last July when there was a difficulty at your house?

A. Yes sir.

Q. Did Mr. Sol Spires come to your house any time that morning before day?

A. Yes sir he came there and wanted me to work for him that day and I told him that I would come that afternoon.

Q. After he came there and told you that, did you go outside the house?

A. Yes sir I had to go out on private business.

Q. Let us know about that, what was the nature 44
of it, you had to go out to relieve yourself?

A. Yes sir and then I went back and went to bed.

Q. Did you see any one out there?

A. No sir not a soul.

Q. You then went back and went to bed?

A. Yes sir.

Q. Did you fasten the door behind you?

A. Yes sir.

Q. Did you hear any one on the outside?

A. No sir.

Q. Who was in the room when you went back in there?

A. No one but my wife and little boy.

Q. Did you talk with your wife when you went back in there?

A. Yes sir I started to talk with my little boy.

Q. Did you hear any knocking at the door? 45

A. No sir I did not hear anything till the door was hurled open and he came on in and busted the room door open and he said to me, hands up and I did not move and he up and shot me and I fell down by my pallet when he shot me and I got my gun and

fired intending to get out of the way and I got out as fast as I could. 46

Q. Where did he hit you?

A. Through the shoulder here.

Q. Will you show us where it is?

A. Yes sir (shows the jury a bullet wound in the right shoulder.)

Q. Did this man shoot you before you shot?

A. Yes sir.

Q. Did he shoot at the time he said hold up your hands or did he wait?

A. He never waited a second.

Q. Did you have time to get up your hands?

A. No sir I did not.

Q. If you had had time would you have surrendered?

A. Yes sir.

Q. Did you know that he was an officer of the law?

A. No sir I did not have any idea who it was.

Q. Did he say he was a constable?

A. No sir.

Q. Could you see him? 47

A. No sir it was too dark.

Q. Why did you take his pistol from him, did you do that, he said you did, did you?

A. No sir.

Q. When you shot what did you do?

A. I ran out of the room and picked up his pistol on the floor, I thought it was mine, it hurt my foot and I reached down and picked it up and poked it in this same pocket and went on, I never noticed the pistol whose it was, till I went on a piece and I met up with two men and they said to me you look like you are in trouble and I told them yes I was shot and they said well you come on back with us and

they took the pistol from me, I went on back a piece with them and then I turned off and they went on about their business.

Q. It was dark? 48

A. Yes sir.

Q. You could not see any one?

A. No sir.

Q. You did not recognize the persons at all?

A. No sir.

Q. Would you have known Mr. Valentine if you had seen him?

A. No sir I would not know him if I saw him now.

Now this warrant was issued pursuant to Sec. 357, Vol. 2, Code of 1902 for South Carolina. The reading of the law is as follows: 49

"Any laborer working on shares of crop or for wages in money or other valuable consideration under a verbal or written contract to labor on farm lands, who shall receive advances either in money or supplies and thereafter wilfullly and without just cause fail to perform the reasonable service required of him by the terms of said contrct shall be liable to prosecution for a misdemeanor, and on conviction shall be punished by imprisonment for not less than twenty days nor more than thirty days, or to be fined in the sum of not less than twenty five dollars nor more than one hundred dollars, in the discretion of the Court: Provided, the verbal contract herein referred to shall be witneseed by at least two disinterested witnesses."

For a considerable time prior to the alleged viola- 50
tion stated in the warrant under consideration this law under which the warrant was issued was reviewed by District Judge William Brawley and declared unconstitutional.

See Ex Parte Drayton 153, Fed. Rep., 986.

Nine days after the date of the citation in the record the Supreme Court of South Carolina upon a Writ of Habeas Corpus reviewed the same law, and declared it unconstitutional. 51

See Ex Parte Hollman, 79, S. C., 9.

For purposes hereinafter to follow, it is important that we quote extensively from the Hollman case. Associate Justice Woods in delivering the opinion of the Court in that case said:

"There is no difference of opinion that a writ of error or the statutory appeal cannot be supplanted in criminal procedure by resort to the writ of Habeas Corpus for correction of mere errors of law. But the distinction is that the Conrts are bound to treat unconstitutional enactments as void in whatever proceedings they may be encountered. An unconstitutional statute tho having the form and name of 52 law, is in reality no law, and the Courts must liberate one suffering imprisonment under it just as if there had never been the form of a trial, conviction and sentence."

Now this expression of the State Supreme Court upon the law controlling the arrest warrant is clear and powerful. The language of that Court covers exactly the position we take as to its own error in affirming the ruling of the trial Court on the motion now before us and set out at page 56 of the record. Th Courts are bound to treat unconstitutional enactments as void in whatever proceeding they may be encountered. And the Courts must liberate one suffering imprisonment under it just as if there had never been the form of a trial, conviction and sentence. 53

It takes no amount of reasoning to affirm that a state is responsible for its own acts and that her acts

are encouched in the doings of her agents. Ex Parte Virginia, U. S., 339. The mere fact that it was the State of South Carolina attempting to drag him, Franklin out of the sacred precincts of his own home, by an unlawful warrant, did not withdraw from him the right to repel the unlawful arrest. And when His Honor, the trial Judge was met with the request to order his liberation, on the charge of murder, the Court was duty bound to know the law applicable to such request, and so act. But when this Plaintiff in error made his cry to the State Supreme Court and it in the light of all the law, sanctioned the ruling of the trial Court with such a grasp of their duty under the laws and cases they cite in Ex Parte Hollman, then we submit that they have made such a gross error that this Court cannot fail to correct.

54

THE ATTEMPT TO ENFORCE THIS UNCONSTITUTIONAL STATUTE WAS A DENIAL BY THE STATE OF DUE PROCESS OF LAW AND OF THE EQUAL PROTECTION OF THE LAW, WITHIN THE MEANING OF THE 14TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

This position is ably supported by the learned Associate Justice Woods in Ex Parte Hollman, 79, S. C., pages 22–24.

"Finally, we consider whether the statute is opposed to the 14th amendment to the constitution of 55
the United States and Sec. 5, Art. XI of the constitution of this state as denying to a farm laborer falling under it the equal protection of the laws. We incline to the opinion that a statute not admitting of this objection could be framed making criminal and

punishing by imprisonment a farm laborer's fraud in obtaining advances, and the land lord's fraud in 56
contracting with a laborer, and that it would be no valid objection to such a statute that it did not apply to all persons or even to all laborers and employees. The Supreme Court of the United States in Conally vs. Pipe Co. 184, U. S. 540, 558, says: "What may be regarded as a denial of equal protection of the laws is a question not always easily determined, as the decisions of this Court and the highest Courts of the States will show. It is sometimes difficult to show that a state enactment having its source in a power not controverted, infringes rights protected by the National Constitution. No rule can be formulated that will cover every case. But upon this general question, we have said that the guarantee of the epual protection of the laws means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or classes in like circumstances. The general rule is familiar that a statute affecting alike all persons of a class is constitutional if the classification be not arbitrary but based upon reasonable grounds. It is thus 57
stated in Barbier vs. Conelly, 113, U. S., 26, 32:

"Class legislation discriminating against some and favoring others, is prohibited, but legislation which, in carrying out a public purpose is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment." The leading authorities on the subject are reviewed in Johnson vs. Spartan Mills, 68 S. C. 339, 47 S. E. 695.

But this legislative discretion is limited in Connelly vs. Pipe Co. Supra. In prescribing regulations for the conduct of trade, it cannot divide those engaged in trade into classes and make criminals of one class,

if they do certain forbidden things while allowing another and favored class engaged in the same domestic trade to do the same things with impunity. It is one thing to exert the power of taxation so as to meet 58
the expenses of government and at the same time, indirectly to build up or to protect particular interests or industries. It is quite a different thing for the State under its general police power to enter the domain of trade or commerce and discriminate against some by declaring that particular classes within its jurisdiction shall be exempt from the operation of a general statute making it criminal to do certain things connected with domestic trade or commerce. Such a statute is not a legitimate exertion of the power of classification, rests upon no reasonable basis, is purely arbitrary and plainly denies the equal protection of the laws to those against whom it discriminates. In view of the expressions we have italicised, the point is by no means free from difficulty, and there is strong reason to argue a valid statute could not be enacted making farm laborers and land lords liable to imprisonment for fraud in their contracts which did not make all other persons guilty of like fraud in their contracts, likewise criminally liable. 59
This was the conclusion reached by Judge Brawley, United States District Judge, in considering the statute before us (Ex Parte Drayton, 153 Fed., 986) and it seems to be the view of Judge Jones of the Federal Court as expressed in the discussion of a similar statute of the State of Alabama. Peonage cases, 123 Fed., 686."

SEC. 357 OF THE CRIMINAL CODE FOR SOUTH CAROLINA UNCONSTITUTIONAL WITHIN THE MEANING OF THE 13TH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND OPPOSED TO SEC. 1990 OF THE REVISED STATUTES OF THE UNITED STATES FOR 1901, KNOWN AS PEONAGE STATUTE AND WHEN THE STATE ATTEMPTED TO ARREST PLAINTIFF IN ERROR UNDER SUCH STATUTE SUCH AN ARREST WAS UNLAWFUL, IN THAT IT WAS AN ATTEMPT TO ENFORCE INVOLUNTARY SERVITUDE. 60

The 13th amendment is as follows:

Sec. 1. Neither slavery nor involuntary servitude, 61
except as a punishment for crime whereof the party shall have been duly convicted, shall exist in the United States, or any place subject to their jurisdiction.

Sec. 2. Congress shall have power to enforce this Art. by appropriate legislation.

Since authority for the Peonage statnte as found in Rev. Stat U. S. for 1901, Sec. 1990 and 5526, is found in the 13th amendment and since the statute itself is the appropriate legislation to enforce the 13th amendment, we now set out the section of said statute relied upon, that we may argue them both together.

Sec. 1990 "The holding of any person to serve or labor under the system known as peonage is abolished and forever prohibited in the territory of New 62
Mexico or in any other Territory or State of the United States: and all Acts, laws, resolutions, orders,

regulations, or usages of the Territory of New Mexico, or of any other Territory or State, which has heretofore established, maintained or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void."

It is the opinion of Counsel that our argument upon the points mentioned in this division of the 63
case will meet stronger judicial sanction by adopting as our own view the conclusion of Associate Justice Woods in the Hollman case, Supra. The language there used' pages 20-22 is as follows:

"* * * * * * This statute is thus interpreted in Clyatt vs. United States, 197 U. S. 207-215. What is peonage? It may be defined as a status or condition of compulsory service, based upon the indebtedness of the peon to the master. The basal fact is indebtedness. As said by Judge Benedict, delivering the opinion in Jeremillo vs. Romero, 1 N. M. 190, 194: One fact existed universally; all were indebted to their masters, this the cord by which they were seemed bound to their master's service. Upon this is based a condition of compulsory service. Peonage is sometimes classified as voluntary or involuntary, but this implies simply a difference in the mode of origin, but not in the character of the servitude. The one exists where the debtor voluntarily contracts to enter the service of creditor. The other is forced upon the debtor by some provision of law. But 64
peonage, however created, is compulsory service, involuntary servitude. The peon can release himself therefrom, it is true, by the payment of the debt, but otherwise the service is enforced. A clear distinction exists between peonage and the voluntary

performance of labor or rendering of services in payment of a debt. In the latter case the debtor, 65
the contracting to pay his indebteeness by labor or service, and subject like any other contractor to an action for damages for a breach of that contract, can elect at any time to break it and no law or force compels performance or a continuance of the service. We need not stop to consider any possible limits or exceptional cases, such as the services of a sailor (Robertson vs. Baldwin, 165 U. S. 275) or the obligations of a child to its parents, or of an apprentice to his master, or of the power of the legislature to make unlawful and punish criminally an abandonment by an employee of his post of labor in extreme cases. That which is contemplated by the statute is compulsory service to secure the payment of a debt.

The sentences we have emphasized clearly indicate 66
that such an enactment as this falls under the condemnation of the peonage statute. It is not possible to bring contracts with agricultural laborers, such as that now under discussion within the special cases referred to by Justice Brewer in this decision, for the siatute was passed to enforce the 13th amendment to the constitution of the United States, and the main purpose of that amendment was to prohibit any form of involuntary service by such laborers, especially Negro laborers in the south. In this opinion the Court, further considering the peonage statute say:

It is not open to doubt that Congress may enforce the 13th amendment by direct legislation, punishing the holding of a person in slavery or involuntary servitude except as a punishment for crime. In the exercise of that power Congress has enacted these sections denouncing peonage and punishing one who holds another in that condition of involuntary servitude. This legislation is not limited to the Territo-

ries or other parts of the strictly National domain, but is operative in the States and wherever the sovereignty of the United States extends. It is important to observe our statute places no limit on the time for 67
which a laborer may be bound under a contract to work, nor does it allow him to release himself from his burden to continue this service on pain of punishment as a criminal by payment of the advances. The statute not only enforces the involuntary service of the laborer because he has contracted the debt with his employer, but it enforces his involuntary service because the debt once existed, tho it be paid. Thus it falls within the prohibition of the peonage statute and goes beyond it. * * * * We conclude that the statute under which the defendant was convicted is invalid because opposed to Sec. 24, Art 1 of the constitution of the state, to the 13th amendment to the constitution of the United States and the Act of Congress passed in pursuance thereof known as the peonage statutes and to the 14th amendment to the constitution of the United States and Sec. V, Art. 1, of the Constitution of this state."

In view of the authorities herein cited the Plaintiff in error was justified in resisting this unlawful 68
arrest, using whatever force was necessary to repel it.

AN OFFICER IS BOUND TO KNOW THE LAW AND IF HE MAKES AN ARREST UPON A SUPPOSED WARRANT WHICH ON ITS FACE IS VOID, HE IS LIABLE TO THE PERSON ARRESTED.

Am & Eng. Ency. 1st Ed. page 750, Vol. 1.
Savacool vs. Boughton, 5 Wend., (N. Y.) 170.
Stephens vs. Wilkins, 6 Barr. (Pa.) 260.
Moore vs. Watts, Ill. 1st Ill., 18.

Grumond vs. Raymond, 1st Con., 40.
Ex Parte Bufford, 3rd Cranch. (U. S.) 448.

A policeman cannot legally arrest one charged with an offense less than felony without a warrant, where the offense is not committed in his presence. Percival vs. Bailey. 49 S. E., 7. 70 S. C. 72. 69

ONE RESTRAINED OF HIS LIBERTY UNDER AN ILLEGAL ARREST MAY USE NECESSARY FORCE, EVEN TO THE TAKING OF LIFE TO MAKE HIS ESCAPE,

State vs. Davis, 31, S. E., 62.
53, S. C., 150.

WERE RIGHTS OF PLAINTIFF ABRIGED AND DUE PROCESS DENIED WITHIN THE MEANING OF 14TH AMENDMENT IN JUDGES CHARGE?

Art. V. Sec. 26 of the Constitution of South Carolina says: "THE JUDGES SHALL DECLARE THE LAW." We take it that this means the whole law controlling the case before him. It is nowhere stated in His Honor's the Circuit Judge's charge what the law was in attempting to serve an unlawful warrant, and in what status the slayer would be when he kills another in such an act: 70

We submit that the law upon this point is, that where one kills another in attempting to serve an unlawful or void warrant, that his crime cannot be greater than manslaughter. And if jury had been so instructed they could not have brought in a verdict of murder.

All of which is respectfully submitted.

JACOB MOORER & JOHN ADAMS,
Plaintiff's Attorneys.

Supreme Court of the United States

OCTOBER TERM, 1909.

No. 164.

PINK FRANKLIN, PLAINTIFF IN ERROR,

Vs.

THE STATE OF SOUTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF SOUTH CAROLINA.

BRIEF IN BEHALF OF DEFENDANT IN ERROR.

J. FRASER LYON,
Attorney-General.
D. S. HENDERSON,
C. M. EFIRD,
B. H. MOSS,
Of Counsel.

PRELIMINARY STATEMENT.

The plaintiff in error was indicted and convicted of murder at the September term, 1907, of the Court of General Sessions for Orangeburg County, South Carolina, and judgment of death pronounced upon him. On appeal to the Supreme Court of South Carolina that judgment was affirmed, the case being brought to this Court upon writ of error. On the 25th day of May, 1907, a warrant for the arrest of plaintiff in error was issued by a Magistrate, and the deceased, Valentine, was appointed constable to execute it. (Folio 28.) Plaintiff in error knew that the warrant was issued, and he was advised to submit to arrest (folio 44). After knowing of the warrant, and before the homicide, he declared that no one man could arrest him. (Folio 46.) The night before the homicide he was at a church nearby his home with a pistol. (Folio 46.) On the 29th of July the deceased went to make the arrest, and apprehending trouble, had one Carter to accompany him. (Folios 36-7.) Upon the two approaching the house of plaintiff in error, they saw him arise from his doorstep and go into his house (folio 37), leaving the door open. (Folio 61.) When the house was reached the officers knocked and called plaintiff in error several times (folio 61); whispering was heard within (folio 37), but there was no answer. (Folio 61.) Carter went to the rear of the house. (Folio 37.) Valentine entered the front door (folio 49), and was shot by plaintiff in error as soon as he entered. Carter, in hurrying back to the front door of the house, was caught by a boy, who held on to him until the door was reached. (Folio 37.) Carter, upon entering the door, was also shot, and was fired upon while escaping from the house. (Folio 38.) Neither the deceased constable nor his associate, Carter, fired a shot. In short, the evidence conclusively shows that an officer of the law, while attempting to execute the warrant of a duly constituted court, having jurisdiction of the subject matter, was wilfully, and

without semblance of excuse, murdered by plaintiff in error.

ARGUMENT.

The question that the suffrage laws of South Carolina are contrary to the Constitution of the United States is not raised.

Although plaintiff in error assigns generally that the suffrage provision of the Constitution of South Carolina is contrary to the Constitution of the United States, such question was never raised nor passed upon in either the Circuit or the Supreme Court of the State, nor is it anywhere intimated or remotely suggested what provision of the Constitution of the United States is violated. This question has no place whatever in this case, and is not, and cannot be raised. Nevertheless, we will say that reference to the suffrage provision of the State Constitution will show that there is no discrimination on account of race, color or previous condition, and there being no such discrimination, there can be nothing therein in violation of the Constitution of the United States.

Only a moot question is raised by the assignment of error that the suffrage laws of South Carolina are in conflict with the Act of Congress, approved June 25, 1868.

It is nowhere shown that plaintiff in error is interested in the suffrage laws of the State. No question as to either plaintiff in error or any one else being denied the right to vote, or the right to register is before the Court, and, however intent those representing plaintiff in error may be upon having this political question decided, it is an abstract question in this case and will hardly be considered by the Court.

If a case should be presented to this court in which the Act of Congress is violated, the question could then be decided, but because some person may, under a condition of facts different from this case be deprived of the right to vote, contrary to the Act of Congress, is a question not before the Court, and is an inquiry upon which it is not called upon to enter. These views are sustained by the case of *Austin vs. Alderman,* 7 Wall., 698. That was a case brought by a resident of Boston who owned stock in Boston national banks. The statute of Massachusetts provided that such bank stock should be taxed at the place of residence of the owner, whereas, the Act of Congress provided that it should be taxed at the place where the bank is located. It is seen that a conflict might easily arise between the statute of Massachusetts and the Act of Congress, but this Court said that inasmuch as the rights of the plaintiff in error were not adversely affected under the operation of the statute, his stock being taxed at the locality of the bank, his case presented only a moot question. It is said in the opinion in that case:

"Whether, in another case arising upon a different state of facts the statute may not produce results in conflict with the Act of Congress, and which this Court will, therefore, be bound to revise and correct, is an inquiry upon which we are not called to enter. We can only consider the statute in connection with the case before us. Having ascertained that it has wrought no effect which the Act forbids, our jurisdiction is at an end." *Austin vs. Alderman,* 7 Wallace, 698.

The question which plaintiff in error has a right to have reviewed by this Court, if properly raised, is in reference to the jury laws. In the case of *Tyler vs. Judges,* 179 U. S., 405, 408, it was said: "The duty of this Court, as of every judicial tribunal, is limited to determining rights of persons or of property which are actually controverted in the particular case before it. * * * But the Court is not

empowered to decide moot questions or abstract propositions, or to declare for the government of future cases, principles or rules of law which cannot affect the result as to the thing in issue in the case before it." It is also held in this case, page 407, that "it must appear that the plaintiff in error has a right to draw it in question by reason of an interest in the litigation which has suffered, or may suffer by the decision of the State Court in favor of the validity of the statute." It is contended that if the State Court had passed upon and held the suffrage laws of the State valid—and it should appear to this Court that they are absolutely at variance with the Constitution and laws of the United States—this could not affect plaintiff in error, for he does not claim that either he or any one else has been denied the right to register or vote. Indeed, such question is in no wise involved in this litigation.

The Act of Congress, approved 25th June, 1868, even if valid and binding, does not restrict the State in adopting jury laws. It relates only to suffrage.

Assuming that the jury laws of the State are drawn in question in this case, they cannot be held to conflict with the Act of Congress of 1868. A careful reading of that Act will show that Congress in no way attempted to regulate the jury laws of South Carolina. The Act relates solely to suffrage, and for the purposes and for the sake of this argument, it will be treated as if it were a valid Act. Section 22, of Article V, of the Constitution of South Carolina, 1895, provides: "Each juror must be a qualified elector under the provisions of this Constitution, between the ages of 21 and 65 years and of good, moral character." Instead of setting forth again, and in detail, what the qualifications for jurors should be, the Constitution adopts as such qualifications the provisions relating to suffrage, so that the above section of the Constitution of South Carolina is in legal effect the same as if it had been set forth

again in this section that each juror must be: (a) a male citizen 21 years of age; (b) a resident of the State for two years, of the county for one year, and of the precinct for six months; (c) registered prior to 1898, on having read, or shown ability to read or explain when read to him any section of the Constitution; (d) or registered subsequently to 1898 on showing he can read and write, or that he owns and pays taxes on property assessed at three hundred dollars or more. It is recognized as a valid method of legislation for the legislative body, when enacting laws, to adopt other laws by reference thereto, and thereby make such adopted laws of the same force and effect as if set forth at length and in detail in the new law. Even the provisions of a repealed Act may be adopted by reference thereto as a part of a new Act, if the intention of the legislative body so appears. By reference to the case of *Murray vs. Wilson Distilling Company*, 213 U. S., page 151, it will appear that South Carolina in that case adopted this method of legislation. See also *Lyles vs. McCown*, 82 S. C., p. 127. This method was adopted by the Constitutional Convention, and it was by this mode declared that jurors must possess certain qualifications, none of which discriminate on account of race, color or previous condition, and which qualifications are set forth in detail in another part of the Constitution. There is nothing to prevent the people of the State from adopting these qualifications for jurors, and the Constitution of South Carolina for the purpose of fixing such qualifications is valid, even though it should be held that these provisions, in so far as they relate to suffrage, are void. It is the jury law that is before the Court, and not the suffrage laws. It is nowhere alleged, or intimated, that the jury laws of South Carolina, either constitutional or statutory, discriminate against any person or class of persons on account of race, color or previous condition, and it is nowhere shown, or attempted to be shown, that in the administration of the law, or we may say, by the act of any

person charged with the administration of the law, that any person or class of persons has been discriminated against on account of race, color or previous condition. It has been repeatedly held by this Court that the jury laws of the several States are not unconstitutional if they do not discriminate on account of race, color or previous condition. It was said by Mr. Justice Field in *Neal vs. Delaware,* 103 U. S., 105:

"Before the adoption of the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution, no one would have pretended that Congress possessed any power to legislate, with respect to jurors—grand or petit—in the State Courts. Upon no one subject would there have been a more general concurrence of opinion than that their selection was a matter entirely of State regulation; that it was for the States exclusively to determine who should be liable to serve as jurors in their courts, what qualifications they should possess, and in what manner they should be selected. Indeed, it was competent for the States to dispense completely with juries, and to require all suits, civil and criminal, to be determined without their aid."

Indeed, all the decisions of this Court in respect to jury laws of the various States have uniformly held that laws are not objectionable, if they do not, in terms discriminate on account of race or color, or if in the administration of the law, discriminations have not been made on account of race or color.

In re Shibuya Jugiro, 140 U. S., 297-8, it was said that "it rests with each State to prescribe such qualifiations as it deems proper for jurymen, taking care only that no discrimination, in respect to such service, be made against any class of citizens solely because of their race."

In *Strauder vs. West Virginia,* 100 U. S., 310, the Court said:

"We do not say that within the limits from which it is not excluded by the amendment a State may not prescribe

the qualifications of its jurors, and in so doing make discriminations. It may confine the selection to males, to freeholders, to citizens, to persons within certain ages, or to persons having educational qualifications. We do not believe the Fourteenth Amendment was ever intended to prohibit this. Looking at its history, it is clear it had no such purpose. Its aim was against discrimination because of race or color."

In *Rawlins vs. Georgia,* 201 U. S., page 639, upon the question of the selection of a jury it was said:

"If the State Constitution and law as construed by the State Court are consistent with the Fourteenth Amendment, we can go no further."

Indeed, all the decisions of this Court in respect to the jury laws of the various States have uniformly held that such laws are not objectionable if they do not in terms discriminate on account of race, or if in the administration of the law discriminations have not been made on account of race or color.

The third assignment of error relates to the charge of a trial judge as to the course a constable must pursue in serving a warrant and making an arrest.

No particular error is pointed out, and there is not an intimation in this assignment that either the Constitution or laws of the United States have been disregarded. It is not conceived that a State is restricted by either Constitution or laws of the United States as to the manner in which their peace officers shall serve warrants issued by her Courts. In the case of *Gibson vs. Mississippi,* 162 U. S., 591, it is said "mere error in administering the criminal law of the State, or in the conduct of a criminal case, no federal right being invaded or denied, is beyond the revisory power of this Court under the statutes relating to its jurisdiction. See *Andrews vs. Swartz,* 156 U. S., 272-276: *Bergeman vs. Bocker,* 157 U. S., 655-659. Indeed, it would

not be competent for Congress to confer such power upon this or any other Court of the United States."

An instruction by a State Court to a jury which does not present any federal question need not be considered by this Court. *Hannibal, etc., R. R. Co. vs. Packet Co.,* 125 U. S., 273; *Davis vs. Texas,* 139 U. S., 651-657; *West vs. Louisiana,* 194 U. S., 258.

Admitting the statute under which the warrant was issued to be unconstitutional, this did not so invalidate the warrant in the hands of the constable as to take from him the protection which the law gives a peace officer while serving warrants, nor can an officer who enters the premises of the accused to make an arrest under such warrant be held to be a trespasser. It must, therefore, follow that it is no defense to say that this statute is unconstitutional. The deceased was a duly appointed and qualified officer of the law; a peace officer undertaking to serve a process of a duly constituted court having jurisdiction to issue the warrant.

Section 21, Article V, of the Constitution of South Carolina provides that Magistrates "shall have exclusive jurisdiction in such criminal cases as the General Assembly may prescribe: *Provided, further,* Such jurisdiction shall not extend to cases where the punishment exceeds a fine of one hundred dollars or imprisonment for thirty days. In criminal matters beyond their jurisdiction to try, they shall sit as Examining Courts and commit, discharge or (except in capital cases) recognize persons charged with such offenses, subject to such regulations as the General Assembly may provide. They shall also have the power to bind over to keep the peace and for good behavior for a time not to exceed twelve months."

Section 20 of the same article provides "each Magistrate shall have power, under such regulations as may now or hereafter be provided by law, to appoint one or more constables to execute writs and processes issued by him."

Section 19, Criminal Code of Laws South Carolina, 1902, provides: "They (Magistrates) shall cause to be arrested all persons found within their counties charged with any offense, and persons who after committing any offense within the county escape out of the same; examine into treasons, felonies, grand larcenies, high crimes, and misdemeanors; and commit or bind over for trial those who appear to be guilty of crimes or offenses not within their jurisdiction, and punish those guilty of such offenses within their jurisdiction."

If the warrant of arrest issue in the ordinary course of justice from a Court or Magistrate having jurisdiction to issue warrants, it is sufficient. It is not the duty of the constable executing the warrant to inquire into the constitutionality of the law under which the warrant is issued. Russell on Crimes, Volume III, page 97.

It is well settled that "an officer acting in good faith and in obedience to a warrant of arrest apparently regular, issued from a Court having jurisdiction of the subject matter, is not liable for imprisonment." This rule is sustained by a multitude of authorities cited. *Leger vs. Warren,* 51 L. R. A., 193. "So where the writ or warrant is valid on its face the officer is not liable for executing the same, although the ordinance may be invalid or unconstitutional, as where the ordinance is unconstitutional on account of unreasonableness and discrimination in favor of residents."

Brooks vs. Mangan, 86 Mich., 576.

"A marshal is not liable for false imprisonment for making an arrest under an invalid ordinance against peddling where the Justice who issues the warrant has jurisdiction for prosecuting violations of ordinances, and the marshal is the proper officer to execute the process."

Hofschulte vs. Doe, 78 Federal Reporter, 437.

Surely if a constable is not liable in damages under a warrant issued in pursuance of an unconstitutional ordinance or statute, the accused would not have the right to slay him under similar conditions. "If one resists an officer in the execution of a process issued by a Court having jurisdiction of the subject matter, and if the process is regular on its face, such resistance is indictable." American and English Encyclopedia of Law, Volume 2, page 910. It is certainly not the law of South Carolina that one may slay a peace officer, if such officer undertakes to serve an arrest warrant issued under an invalid statute, and it is equally certain that it is not the duty of a constable to inquire into or pass upon the validity of a statute under which an arrest warrant is issued. There is no question in this case that the warrant is irregular on its face. It is the duty of the accused to submit to arrest, and afterwards ask the Court to discharge him from custody. This was the course pursued in the cases *ex parte Drayton*, 153, Federal Reporter 986, and *ex parte Hollman*, 79 S. C., page 9. The statute involved in the Drayton and Hollman cases was the same as that under which the warrant of arrest was issued for plaintiff in error. Drayton and Hollman submitted to arrest and were afterwards discharged from custody; the one by the Federal Court, the other by the Supreme Court of the State. This was the course which plaintiff in error should have pursued.

The fourth assignment of error relates to the refusal of the trial Judge to direct a verdict in favor of plaintiff in error, on the ground that the warrant of arrest was unlawful and void, being issued under a statute which was violative of the Constitution of the United States, and, further, because it was held that petitioner was not denied his rights under the Constitution of South Carolina of 1895, Article I, Section V,

and under the Fourteenth and Fifteenth Amendments of the Constitution of the United States.

A Circuit Judge of South Carolina has not the power to direct a verdict, except in cases in which only one conclusion can be reached from the evidence. It is conceded that the law under which the arrest warrant was issued is unconstitutional. *Ex parte Hollman,* 79 S. C., 9. It was so declared after the homicide in this case. But this fact was only one of the many circumstances attending the homicide, and the Judge very properly said that if the man (Constable Valentine) had no warrant at all it would not be competent to direct a verdict in favor of the plaintiff in error, and he left all of the facts in the case to be determined by the jury. (Folio 63.) Section 26, Article V, of the Constitution of South Carolina, 1895, provides: "Judges shall not charge juries in respect to matters of fact, but shall declare the law."

As to the constitutionality of the laborers' contract law, the question was not properly raised in this case, and was not decided adversely to the claim of plaintiff in error. The Act in question was held by the Supreme Court of South Carolina in *ex parte Hollman, supra,* where the federal question was properly raised, to be invalid because opposed to the Thirteenth and Fourteenth Amendments to the Federal Constitution. This question was not so raised in the case at bar as to call for a decision as to its validity, and was not decided by the Supreme Court. The attempt to raise it was upon a motion to direct a verdict of not guilty; that motion necessarily involved a question of fact and the sufficiency of the entire evidence in the case to support the verdict. This was not a federal question. The refusal of the motion was upon the ground that the sufficiency of the testimony was a matter of fact to be decided by the jury, and the decision of the legal question as to the validity of the arrest warrant was not necessarily involved in disposing of the motion, and, therefore, was not decided.

It cannot now be raised. *Baldwin vs. Kansas,* 129 U. S., 52-57. Refusal of the trial Judge to direct a verdict and the affirmance by the Supreme Court of his refusal, was upon a ground entirely independent of the validity of the warrant and of the statute referred to. *Gatewood vs. North Carolina,* 203 U. S., 542. "It has often been held, at least in actions at law, that this Court has no jurisdiction to revise the decision of the highest court of a State upon a pure question of fact, although a federal question might arise if the question of fact were decided in a particular way." *Israel vs. Arthur,* 152 U. S., 362; *Dower vs. Richards,* 151 U. S., 658.

The refusal of the motion to direct a verdict of not guilty did not deny that the statute was invalid under which the arrest warrant was issued. But, as said by the trial Judge, if "it were null and void, or even if the man (Valentine) had no warrant at all, it would not be competent for the Court to direct a verdict in favor of the defendant, Pink Franklin." The defendant was on trial under an indictment for murder, and even assuming the deceased, acting under an invalid warrant, had committed an unlawful assault upon the defendant, it was a question of fact for the jury to determine, from all the evidence, whether the defendant had established his affirmative defense that the homicide was excusable as a necessary act in lawfully resisting an illegal assault, or attempt to arrest.

There was no request that the trial Judge instruct the jury in reference to the validity or invalidity of the arrest warrant, or of the statute for the violation of which it was issued, nor was there any exception taken in the State Court on account of the failure of the Judge to so charge. If the plaintiff in error wished a ruling from the trial Court as to the validity or constitutionality of the statute for the violation of which the arrest warrant was issued, he should have requested the Court so to instruct the jury.

It has been the uniform decision of this Court that it

will not undertake to review decisions of State Courts construing local constitutional or statutory provisions, and when the Supreme Court of South Carolina has stated that defendant in error has been given all of the rights guaranteed to him under the Constitution of South Carolina, such holding is final, and not subject to review by this Court. The rule laid down by this Court in one of its latest decisions is "The highest Court of the State is, except in the matter of contracts, the ultimate tribunal to determine the meaning of its statute." *Batchel vs. Wilson,* 204 U. S., 36. The question as to the violation of the State Constitution was made and decided against the plaintiff in error by the Supreme Court of the State.

The rest of this assignment of error relates to some right which plaintiff in error imagines he is denied in contravention of the Fourteenth and Fifteenth Amendments to the Constitution of the United States. He does not point out what particular rights were denied him under these provisions of the Federal Constitution other than the claim that the trial Judge, in refusing to direct a verdict on account of the warrant having been issued under an invalid statute, was denying the plaintiff in error rights guaranteed under the Thirteenth and Fourteenth Amendments. If plaintiff in error had been on trial for a violation of a laborers' contract, a motion to direct a verdict of not guilty should have been granted, but in the case at bar the fact that the laborers' contract law is unconstitutional can have no bearing upon the guilt or innocence of the accused. We have undertaken to cover this feature of the case hereinbefore.

Plaintiff in error had due process of law; that is, the general law of the land was administered in his case, as it relates to the trial of all persons, irrespective of race, charged with crime. None of these laws contravene the Fourteenth Amendment of the Constitution, nor is it

pointed out anywhere in the assignment wherein he is denied the equal protection of the law.

It is argued here, though not assigned as error, that the statute of this State providing for listing and drawing of jurors confers arbitrary power upon the Jury Commissioners and discriminates against plaintiff in error.

The statute as to the listing and drawing of juries is found in 23d Statutes of South Carolina, Acts of 1902, page 1066. Section 2 of the Act appoints the Jury Commissioners and says: "They shall prepare a list of such *qualified electors* under the provisions of the Constitution, between the ages of 21 and 65 years, and of *good moral chaacter,* of their respective counties as they may deem otherwise *well qualified* to serve as jurors, *being persons of sound judgment* and *free from all legal exceptions.*" There is no assignment of error before the Supreme Court of the United States concerning the unconstitutionality of this Act. Yet, we are met by the argument here that this statute is unconstitutional, on the ground that the statute gives arbitrary discretion to the Jury Commissioners and is inimical to the Fourteenth Amendment of the Constitution of the United States, which guarantees equal protection of the laws to all citizens. Let it be noted that there is no allegation or proof, or pretense of allegation or proof, that any discrimination, arbitrary or otherwise, was practiced by the Commissioners in the listing or the drawing of juries, but it is simply claimed that upon the face of the statute that it gives an arbitrary discretion; and such cases are quoted as the Chinese Laundry case, which is entitled *Yick Wo vs. Hopkins,* 118 U. S., 356, to sustain this position. That case, when examined, will convince the Court that it was based upon the actual working of the ordinances to show that it was intended to be discriminatory and had been executed in an arbitrary manner. We

submit to the Court that this statute is not discriminatory in any way upon its face, nor was it intended, nor does it deprive any one of the equal protection of the laws as contemplated by the Fourteenth Amendment of the United States Constitution. The statute must be construed along with the two sections of the Constitution quoted above. It directs the Jury Commissioners to put in the box qualified electors of good moral character, and adds, "as they may deem otherwise well qualified to serve as jurors, being persons of sound judgment and free from all legal exceptions." The statute means, and ought to be so construed, that the words "being persons of sound judgment and free from all legal exceptions" qualifies the power given to the Commissioners to list as jurors such persons "as they may deem otherwise well qualified to serve as jurors." In other words, the Jury Commissioners could only put in the box electors who were of good, moral character, and, besides that, persons of sound judgment and free from all legal exceptions. That clearly shows that they could not exercise an arbitrary discrimination, and certainly no discrimination was meant, or could be assumed on account of race, color or previous condition, the point at which the counsel for the plaintiffs in error are straining.

The Supreme Court of the State in this case, in holding that the statute referred to is constitutional, said: "We fail to see how the selection of proper and competent jurors is unconstitutional. No reference is made to color, or previous condition as prerequisites for service as jurors, for such Jury Commissioners are merely to select men of good, moral character, and legally competent colored men, when they have good character, are competent for service on the juries." See *Neal vs. Delaware,* 103 U. S., 370.

In *Murray vs. Louisiana,* 163 U. S., 108, where discriminatory power was conferred upon the Commissioners to select the jurors, the Court said: "It is not pretended that the accused was subjected to any other or different treat-

ment in reference to that feature of the statute than that which prevails in other cases, or on the trial of white citizens."

In *Gibson vs. Mississippi*, 162 U. S., p. 566, this doctrine is established: "The requirements of the Mississippi Constitution of 1890, that no person should be a grand or petit juror unless he was a qualified elector, and be able to read and write, didn't prevent the Legislature from providing, as was shown in the Code of 1892, that persons selected for jury service should possess good intelligence, sound judgment and fair character. Such regulations are always within the power of a Legislature to establish, unless forbidden by the Constitution. *They tend to secure the proper administration of justice and are in the interest equally of the public and of persons accused of crime.*" It will be perceived that the statutory provision contested in this matter is not prohibited by the constitutional provision concerning the qualification of jurors, and such statutory provision is unquestionably for the good of the public and for the individuals concerned. So long as in the execution of the law no arbitrary discrimination is used, the law being plain and reasonable upon its face, the panel should not be quashed. On this point we refer the Court to *Martin vs. Texas*, 200 U. S., page 319. Also *Thomas vs. Texas*, 212 U. S., 283. In this latter case we find this pertinent doctrine laid down by this Court: "We understand the rule to be that mere error in administering the criminal law of the State, or in the conduct of a criminal trial, no federal right being invaded or denied, is beyond the revisory power of the Supreme Court of the United States under the Constitution and statutes regulating its jurisdiction."

It is not contended that the words in the jury statute, complained of as aforesaid, namely, that the Jury Commissioners, after carrying out what is in the Constitution as to jurors, could place in the box such persons "as they may deem otherwise well qualified to serve as jurors, being per-

sons of sound judgment and free from all legal exceptions," is an unconstitutional provision, because it is in addition to what is in the Constitution of South Carolina, but it is simply contended that it is discriminatory. If, however, it was claimed to be in addition to the qualifications in the Constitution, such argument would not stand, because it has been decided in South Carolina that the exhaustive grant in the Constitution is not favored, and that qualifications placed in the Constitution can be added to, unless the Constitution prohibits the same, inasmuch as that power is reserved in the people who speak through the Legislature passing the statute.

Pelzer, Rogers & Co., vs. Campbell, 15 S. C., 593.
Ex parte Lynch, 16 S. C., 35.

We are met by the further argument that the trial Judge denied plaintiff in error the equal protection of law, and due process of law, because he refused to continue the case upon the ground that the coroner had not properly kept his record of the inquest, and because sufficient time was not allowed to examine such record thereof as was made.

There is no assignment of error covering this point. Nevertheless, it may not be improper to present our views thereon. It cannot be conceived that a continuance of the case would have cured the alleged defects in the coroner's records for they must, of necessity, have remained as originally made. Merely lapse of time could have neither taken from nor added to them. It is submitted that if the coroner had failed to hold the inquest at all, or having held one, made no record thereof, that this would not have prevented the State punishing the murderer. An indictment may be presented by a grand jury against the murderer, and he may be tried without an inquest ever being held over the dead body of his victim. The inquisition has no bearing upon the trial of the accused. Its only effect is to render the

party accused liable to arrest. A. & E. Encyclopedia of Law, Volume 7, 610. But in this case an inquest was held and a record made, and this record of the testimony was given to counsel for plaintiff in error upon application to the State's attorney. This occurred several days prior to the trial, and ample time was allowed for a full examination thereof. The Circuit Judge and Supreme Court so held. (Folio 4.) The only use plaintiff in error desired to make of this record, as he argues, was to contradict the State's witnesses in the event any of them should testify on the trial differently from the testimony given at the inquest, but it does not appear that there was any contradiction. In order for the testimony taken at a coroner's inquest to be available for this purpose, it is not necessary for the coroner to record it in a book. A record of the testimony was kept, which counsel, as held by the Court, had ample time to inspect, and full opportunity to use, and it was competent to use this testimony so taken for all relevant purposes. Besides, plaintiff in error was entitled to compulsory process to bring the coroner, or any witness at the coroner's inquest, before the Court to contradict the State's witnesses and to testify generally. The rule in South Carolina relating to such testimony is found in the case of *State vs. Jones,* 29 S. C., 201. In the syllabus of that case the following rule appears: "The testimony of a witness at the trial in a murder case may (the proper foundation being laid) be contradicted by his testimony at the inquest; and proof by the coroner of the testimony then taken down in writing by himself, although not otherwise remembered, or the testimony itself signed by the witness, is competent for such purpose." It therefore appears that no right was denied plaintiff in error when a continuance was refused.

If the suffrage question involved in the contention of plaintiff in error concerning the jury question is to

be considered, then we submit the following considerations to the Court:

The plaintiff in error, Pink Franklin, challenged by motion to quash the array of the Grand Jury of Orangeburg County, where he was tried, claiming that, as according to the Constitution of South Carolina of 1895, a juryman must be an *elector,* and as said Constitution *qualified* suffrage to the extent that an elector must either own a certain amount of property or be able to read a section of the Constitution, then said article of the Constitution (Article II, Constitution 1895) was null and void, inasmuch as the Constitution of South Carolina of 1868 maintained *universal* suffrage, and inasmuch as the Congress of the United States on June 25, 1868 (15th Statutes, page 73), passed the following provision: "That the Constitution of neither of said States shall ever be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote in said State who are entitled to vote by the Constitution thereof herein recognized," and, hence, that as the suffrage clause of the Constitution of 1895 was contrary to this Act, it is void, the grand jury was illegal and the motion to quash should have been sustained. This position was denied by the Circuit Court at Orangeburg and by the Supreme Court of South Carolina, and is brought to this Court under an allegation of error.

Let it be noted by the Court that no evidence was given or suggested, either by affidavit or from the mouths of witnesses, that the grand jury in question did not have colored men on it; nor that there were not colored men in the jury box which was listed at the beginning of the year, and from which box this grand jury in question was drawn. The sole question raised in the case, in this part of it, is, that inasmuch as a juryman must be an elector in South Carolina, the article of the Constitution which lays down the qualification of an elector is null and void as unconsti-

tutional, because, forsooth, it qualifies suffrage, and that the Act of 1868, *supra,* placed a condition upon South Carolina that she should never qualify suffrage.

(a) We submit *that the Act of Congress of June 25, 1868,* (15th Statutes, page 73), *in so far as it sought to place a condition upon the sovereign States named therein, such as the State of South Carolina, to prevent it and its people from enacting in the future any constitutional feature which would qualify suffrage, or change the suffrage from what it was in the Constitution of 1868, is unconstitutional according to the Constitution of the United States of America.*

We shall not consider for the present the effect of the Fourteenth and Fifteenth Amendments to the Constitution of the United States upon the suffrage article of the Constitution of South Carolina, 1895. Let it be borne in mind that whilst the Act of Congress in question was approved June 25, 1868, the Fourteenth Amendment was not ratified by South Carolina until July 9, 1868, and was not declared as ratified by a sufficient number of States through the proclamation of the Secretary of State until July 26, 1868, nor was the Fifteenth Amendment of the Constitution of the United States ratified by South Carolina until March 15, 1869, nor was it proclaimed by the Secretary of State as ratified by a sufficient number of the States until March 30, 1870. From this statement it will be seen that the Act of Congress by which it is sought in the argument here to uproot the suffrage article of the Constitution of South Carolina of 1895, was passed before these two far-reaching amendments were ratified, and, hence, it is to be judged in the first place by the Constitution of the United States as it stood before these two articles were ratified. We submit that there is not a line or a syllable in the Constitution of the United States previous to the enactment of this Act in which can be found by direct entendment, or by implication, anything allowing Congress to pass such an Act; to

put a condition upon a sovereign State, what it and its people must put in their Constitution or what they must keep from putting in their Constitution.

In the lectures of Mr. Justice Miller on the Constitution published by Mr. Bancroft Davis, page 574, he quotes the 10th Article of the Amendments as follows: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." The Justice himself in the lecture, at page 575, says: "The Government of the United States was created by the voluntary action of the people of the different States. When this was originally done there were thirteen States whose people united in forming the General Government of the United States of America. In doing this the States parted with all the powers of government which were thought necessary to establish that of the United States, but those which they did not thus surrender and give up to the National Government were retained by each State as a part of its own system of political power. The powers thus ceded to the United States and parted with by the several States are much the smaller part of the general functions of government or civil society, and it resulted that all the powers not conferred upon the United States were to remain, and did remain with the States themselves."

It is said by many of the writers that the first ten amendments of the Constitution of the United States related to the powers reserved by the States, whilst the preceding part of the Constitution related to the powers which were given to the National Government and the known prohibitions which were made against the States.

Mr. Justice Story, in his work on the Constitution, Vol. II, Section 1907, referring to the Tenth Amendment, *supra*, reminds us of the historical fact that in the Congress that proposed this amendment an offer was made to place before the word "delegated" in said amendment, the word

"expressly," but that the proposed amendment was lost and the provisions remained as they were in the Constitution, *the powers not delegated to the United States*, etc., and he says of this amendment that it "is a mere affirmation of what upon any just reasoning is the necessary rule of interpreting the Constitution," and that the Constitution being "an instrument of limited and enumerated powers it follows irresistibly that what is not conferred is withheld and belongs to the State authorities if invested by their constitutions of government respectively in them; and if not so invested it is retained *by the people* as a part of their residuary sovereignty." Hence, we submit that the people, through their delegates in a Constitutional Convention legally assembled, such as was the Constitutional Convention of South Carolina in 1895, had the power, under the reserved rights in them, and which was not in any way prohibited by any power granted the nation under the Constitution of the United States of America, to qualify the suffrage in such way as they saw fit, with the exceptions as laid down in the Fourteenth and Fifteenth Amendments passed after this Act of Congress now under consideration, and which will be treated of hereafter. To use the terse language of Mr. Justice Story, found in 1908 Section of his works, *supra*: "All powers not delegated (not all powers not *expressly* delegated) and not prohibited, are reserved." The power to qualify suffrage which was inherent in the people of South Carolina was not delegated to the United States of America nor prohibited in any power which was given to the United States of America, but was reserved in the people of South Carolina.

If this be so, how, then, could the Congress of the United States of America, in the Act of the 23d day of June, 1868, place *a condition* upon South Carolina as to its suffrage?

In this connection we might clearly say that this Act putting a condition upon such States (which this Court

has often declared never went out of the Union and always were members of the Union), is an enactment of great inequality and injustice on some States of the Union, whilst no such attempt in any general law was made upon the other States of the Union. Acting under the right reserved in the States to qualify their suffrage in October, 1845, the State of Connecticut passed a provision qualifying suffrage, and in doing so, curious enough to say, it spoke of "every *white* male citizen," and so did the State of Massachusetts by the Twentieth Amendment of its Constitution qualify their suffrage, and since the enactment of the Fourteenth and Fifteenth Amendments, to wit, in 1889, Wyoming qualified suffrage, and so did Colorado in its Constitution of 1895. The States which the Supreme Court of the United States, after full consideration, has attached to those States of the Union which formed the Confederate States of America, is significant in its bearing upon the constitutionality of the Act in question. The case of *Texas vs. White,* found in 7th Wallace, page 700, clearly and distinctly holds that under the powers given in the original United States Constitution, to see that a republican form of government was guaranteed to every State, Congress had the right by legislation to see that proper State governments were established, and even to have military rulers placed over the people, but yet, in language that cannot be mistaken, Chief Justice Chase says, at page 729: "In the exercise of the power conferred by the guaranty clause, as in the exercise of every other constitutional power, discretion in the choice of means is necessarily allowed. It is essential only that the means must be necessary and proper to carry into execution the power conferred through the restoration of the State to its constitutional relations under a republican form of government, and that no acts be done or no authority exerted which is either *prohibited* or *unsanctioned by the Constitution.*" Again, in the same authority, speaking of the ordinances of secession, it is said:

"They are utterly without operation in law. The State did not cease to be a State, nor her citizens to be citizens of the Union." In the great case of *White vs. Hart,* 13th Wallace, the same doctrine was enunciated in language, if possible, more forcible and clear, and whilst the State of Georgia in its new Constitution enacted after the war endeavored to pass a provision which impaired the obligation of contracts, contracted before that Constitution, the Supreme Court of the United States declared that such a provision could not be enacted, because Georgia had never been out of the Union, and she was bound by the provision in the original Constitution of the United States of America prohibiting the enactment of any provision which impaired the obligation of a contract, which power of prohibiiton had been granted in the Constitution of the United States by a Constitutional Convention of the States and which was not reserved to any State. On the same principle that Georgia never went out of the Union and could do nothing against the original Constitution of the United States and its amendments, in the well considered case of *Gunn vs. Barry,* 15th Wallace, page 610 (a case which has been of great import to the people of the South), it was held that the homestead exemption of a larger character allowed by the Reconstruction Constitution of Georgia could not be applied as an exemption to debts contracted prior to that Constitution, because to allow such a thing would be in violation of the original power in the original Constitution of the United States that no remedy could be allowed which would impair the obligation of a contract.

Mr. Justice Swayne, at page 623, says: "Georgia, since she came into the Union as one of the original thirteen States, has never been a State outside of the Union. Her constitutional rights were for a time necessarily put in abeyance, but her constitutional disabilities and obligations were in no wise affected by her rebellion. The same view is to be taken of the provision in her organic law and

of the statute in question as if she had been in full communion with her sister States when she gave them being. Though her Constitution *was sanctioned by Congress, this provision can in no sense be considered an act of that body.* The sanction was only permissible as a part of the *process of her rehabilitation and involving nothing affirmative or negative beyond that event.* If it were express and unequivocal, the result would be the same. Congress cannot by authorization or ratification give the slightest effect to a State law or constitution in conflict with the Constitution of the United States. That instrument is *above* and *beyond* the *power of Congress* and the States, and is alike obligatory upon them." So we say here, that this attempt to hold that the Constitution of 1895 is inoperative and void because of the Act of Congress passed in 1868 cannot prevail, because the Constitution of the United States "is above and beyond the power of Congress and the States, and is alike obligatory upon both;" and because the right to regulate suffrage without condition at the time of the enactment of the Act in question was reserved to the States, and not prohibited by any power granted the United States of America by the States, and to this day it is within the States subject to the powers given the Government by the people in the Fourteenth and Fifteenth Amendments, we say it is unconstitutional as to the condition in question.

It is proper for us in this discussion before the Court to say that the doctrine settled by *Texas vs. White, supra, White vs. Hart, supra,* and *Gunn vs. Barry, supra,* (that the States of the Union which attempted to secede had never been out of the Union, because under the Constitution of the United States the Union could not be broken, and never was broken, and that all during the War Between the States the Constitution of the United States was paramount and superior within its delegated powers, expressed and implied, and the laws which were inactive in the States who had attempted to secede) had been recog-

nized and enunciated by the highest Court of the State of South Carolina (from which the case now at bar has been brought); that is to say, the Court of Errors, composed of the Supreme Court, the Circuit Judges and the Equity Chancellors.

In the case of the *State vs. Carew,* reported in 13th Richardson's Law, p. 498, that Court, speaking through Chief Justice Dunkin, decided "so much of the Acts of *1861* to *1865,* commonly called the *stay* law, which has declared that it shall not be lawful for any officer to serve, or execute mesne or final process for the collection of money, is void, because repugnant to the provision of the Constitution of the United States "that no State shall pass any law impairing the obligation of contracts and the similar provision of the Constitution of this State."

This decision was rendered in *1866,* and before the Supreme Court of the United States had spoken of these subjects, and it is presented to the Court to show that South Carolina had acted upon the same theory as declared by the Supreme Court of the United States, though in no such forcible language, and denied to her citizens the benefit of stay laws as against the debts that had been previously contracted, because of the supremacy of the Constitution of the United States.

After the decisions such as *Texas vs. White,* the Supreme Court of South Carolina, in *Calhoun vs. Calhoun,* 2d S. C. new series, page 296, following the case of the *State vs. Carew* and the case of *Texas vs. White,* decided that a provision placed in the Constitution of South Carolina in 1868, that debts contracted for the sale of negroes whilst in slavery should not be collected was unconstitutional as in violation of the aforesaid provision of the Constitution of the United States of America, and upon the theory that the State had never been out of the Union, but was always a component part thereof.

We are met with the contention that the *condition* in the Act of Congress of June 25, 1868, "that the Constitution of neither of said States shall ever be so amended or changed as to deprive any citizen, or class of citizens, of the United States of the right to vote in said State who are entitled to vote by the Constitution thereof herein recognized," is auhorized by the provisions of Article IV, Section 4, of the United States Constitution called the "Guaranty Clause of the Constitution," which is as follows: "The United States shall guarantee to every State in this Union a *republican* form of government," and we are told that the authority to sustain such position is to be found in the case concerning Dorr's rebellion, *Luther vs. Borden*, 7th Howard, p. 1. When we look to that we find in unmistakable language that what is a *republican* form of government is a *political* question, and not a *judicial* question, and the Supreme Court distinctly, at page 15, enunciates this doctrine: "No one, we believe, has ever doubted the proposition that, according to the institutions of this country, the sovereignty in every State resides in the people of the State, and that *they may alter and change their form of government at their own pleasure.*"

It seems to us that the proper construction of the Act of Congress of 1868 in question is this: that they recognize that the Constitution of the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama and Florida, presented a form of government which was *republican*, and being so satisfied that the States had a form of government which was republican, they allowed representation in Congress, *but they made the error to attempt to add the condition to this recognition of a republican form of government, which condition prohibited the States from ever changing their mode of suffrage from universal suffrage to qualified suffrage, which condition is contrary to the powers of Congress permitted by the Constitution of the United States.* If such a condition could stand as a mandate to

the Act of Congress, then such States as Connecticut and Massachusetts, which have qualified suffrage, may be attacked on the ground that they have not a republican form of government, because they have qualified suffrage, and this applies to other States of the Union as well.

If this Act of Congress in question, in so far as this condition is concerned, is to be sustained, and it is claimed that because the condition was put there, South Carolina, and States in the same plight, cannot qualify their suffrage, it would be tantamount to saying that the Congress of the United States has the right to change the organic law of any sovereign State, and that the constitution of any State is to have the force and effect of the Act of Congress, and Congress may from time to time amend, or even repeal it, and the State is in fact and in law disfranchised and a stranger to that domestic sovereignty characteristic of the States of the Union.

Further, we may say that the only provision of the Constitution of the United States as to the qualification of electors is to be found in the 1st Article, Section 2, which is as follows:

"The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for the electors of the most numerous branch of the State Legislature."

What is meant by that section of the Constitution? What is implied strongly in the meaning thereof? We submit that it is a recognition by the fathers who made the Constitution that the electors for Representatives in the lower House of Congress should be the same as the electors who elected the members of the House of Representatives in the sovereign State; and that the State in its Constitution and in its machinery had the power from time to time to denominate what was the equalification of electors who could vote for members of the House of Representatives of

the State, and it is very clear that in this section of the Constitution no power was given to Congress to change, alter or amend the qualifications which the State could make for such electors, and hence that Congress had no power whatsoever to place such a *condition* upon the States as to the qualification of electors as they did in the Act of 1868 under consideration.

In the Federalist, in letter LII, Mr. Madison, concerning the aforesaid Section 2 of Article I of the Constitution, says:

"Those of the former are to be the same with those of the electors of the most numerous branch of the State Legislatures. The definition of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the convention, therefore, to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress would have been improper for the reason just mentioned. To have submitted it to the legislative discretion of the States would have been improper for the same reason; and for the additional reason, that it would have rendered too dependent on the State governments that branch of the Federal Government which ought to be dependent on the people alone. To have reduced the different qualifications in the different States to one uniform rule would probably have been as dissatisfactory to some of the States as it would have been difficult to the convention. The provision made by the convention appears, therefore, to be the best that lay within their option. It must be satisfactory to every State, because it is conformable to the standard already established, or which may be established by the State itself. It will be safe to the United States, because, being fixed by the State constitutions, it is not alterable by the State governments, and it cannot be feared that the people of the States will alter this part of their constitution in such a manner as to abridge the rights secured to them by the Federal Constitution."

Section 4 of Article I of the United States Constitution provides: "The time, places and *manner* of holding elec-

tions for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such *regulations*, except as to the place of choosing Senators."

This section has been construed by the Supreme Court in such cases as Ex parte Seibold, 100 U. S., 371, and Ex parte Yarborough, 110 U. S., 651, to mean that Congress had the power to punish by statute any persons who, by force or by fraud, influenced elections in which members of Congress were to be elected, but nowhere is it enunciated that Congress has the power to limit or specify, by condition or otherwise, the qualifications of electors, and it has been decided by this Court in *Minor vs. Happerset*, 21 Wallace, 130, and the *United States vs. Cruckshanks*, 92 U. S., p. 542, that the power of regulating the qualifications of suffrage belonged to the States alone.

Again, as to the guaranty clause of the Constitution, Section 4, of Article IV, whereby Congress has the power to guarantee a republican form of government to each State, let us say that what is meant by a republican form of government is referred to by Mr. Madison in XLIII of the Federalist as follows:

"Whenever the States may choose to substitute other republican forms they have a right to do so, and to claim the Federal guaranty for the latter. The only restriction imposed on them is, that they shall not exchange republican for anti-republican constitutions; a restriction which it is presumed will hardly be considered as a grievance."

Can the Constitution of South Carolina as to suffrage passed through the year 1895 be considered anti-republican? We claim not, and we refer the Court to the fact that when the original Constitution of the United States was formed South Carolina had a provision in her Constitution qualifying suffrage stronger than the one now in existence. In Vol. I, Statutes at Large of South Carolina, page 185, we find that provision as follows:

"Section 4. Every free white man of the age of twenty-one years, being a citizen of this State, and having resided therein two years previous to the day of election, and who hath a freehold of fifty acres of land or a town lot, of which he hath been legally seized and possessed at least six months before such election, or, not having such freehold or town lot, hath been a resident in the election district in which he offers to give his vote six months before the said election, and hath paid a tax the preceding year of three shillings sterling towards the support of this government, shall have a right to vote for a member or members, to serve in either branch of the Legislature, for the election district in which he holds such property or is so resident."

We refer the Court to what Mr. Cooley, in the 7th Edition of his Constitutional Limitations, says on the power of the States to change their constitutions from time to time, p. 59:

"In the original States and all others subsequently admitted to the Union, the power to amend or revise their constitutions resides in the great body of the people as an organized body politic, who, being vested with ultimate sovereignty and the source of all State authority, have power to control and alter at will the law which they have made."

(b) *We contend that this Act of Congress of the 23d of June, 1868, which sought to place a condition upon sovereign States as to what they should put in their constitutions, which was not prohibited or allowed to Congress, even if any way it should be considered constitutional, was repealed by implication by the Fourteenth and Fifteenth Amendments made by the people to the Constitution of the United States. Those two amendments were made unquestionably in spirit to protect the negro race in their immunities and privileges as citizens of the United States,* and to protect them in their exercise of suffrage. This Act in question, as we have said, was passed on June 25, 1868. At its December term, 1868, of the Supreme Court of the United States, the case of *White vs. Texas* was argued and

decided, and promulgated, and the doctrine was therein enunciated that none of the Confederate States had ever been out of the Union, and the Fourteenth and Fifteenth Amendments follow in order that there should be constitutional guarantees to protect the negroes in the several aspects expressed therein. We have already given the dates of ratification and promulgation by the Secretary of State of those two amendments. These two amendments, we submit, take the place of this Act of Congress which would not stand the test of constitutional investigation. "That a statute may be recalled and repealed by a constitution as well as by a statute, 'goes without saying.' "

Oakland-Pague & Co. vs. Hilton, 69 Cal., 485.
Cass vs. Dillon, 2d Ohio, pg. 608.

Repeal by implication is not favored as a general rule "unless the latter act is either repugnant to the earlier act, or *fully embraces the subject matter,* or *unless the reason for the earlier act is beyond peradventure removed.*"

26 Am. and English Enc., pp. 722-3.
Chicago Railroad Co. vs. U. S., 127 U. S., p. 406.

We submit to the Court that it is clear that the Fourteenth and Fifteenth Amendments fully embrace the subject matter of this Act of Congress in question, because the intent of the Act was to protect the negro race, and the intent of these amendments was to do the same thing in the same respect, and we submit, further, that any reason for the further existence of the Act of Congress is beyond peradventure removed by the ratification and enactment of the two amendments.

In the *United States vs. Tynen,* 11th Wallace, p. 92, Mr. Justice Field states the question clearly as follows: *"If the two Acts are repugnant in any of their provisions, the latter Act, without any repealing clause, operates to the*

extent of the repugnancy of the repeal of the first." And even where two Acts are not in express terms repugnant, yet if the latter Act covers the whole subject of the first and embraces new provisions, plainly showing that it was intended as a substitute for the first Act, it will operate as a repeal of that Act.

To the same effect is *Fiske vs. Henerie,* 142 U. S., 468; *Tracy vs. Tuffly,* 134 U. S., 223.

Repugnancy is not even essential to the repeal if the later Act shows intent to cover the former subject matter.

District of Columbia vs. Hutton, 143 U. S., 18.

(c) The plaintiff in error, as far as we can perceive, does not contend that because a juror must be an elector, and because certain qualifications of suffrage are put upon electors under the second article of the Constitution of South Carolina of 1895, which refers to suffrage, that the Act so specifying and the constitutional article so specifying is contrary to the Fourteenth and Fifteenth Amendments of the Constitution of the United States, but we are not afraid to meet that position at all. There is nothing in the jury law, either as it appears in the Constitution of South Carolina or in the statutes carrying out the same, that upon its face tends in the slightest degree to interfere with the immunities and privileges of the negro race, nor discriminates against him as a juror or as an elector. If there does not exist a republican form of government in South Carolina (and it could be shown by the facts if negroes, on account of their race, color or previous condition were discriminated against in the right to sit upon juries, or to become electors) under the guarantee clause of the Constitution of the United States, Congress could see after those matters, and no fight would be made against it, because no such discrimination exists or was intended to exist. We will append to the argument the entire 2d Arti-

cle of the Constitution of 1895 as to the rights of suffrage, and it will be seen by the reading thereof that there is no discrimination whatsoever against the negro or any other race, because of their race, color or previous condition.

As was said by Mr. Justice Holmes in *Gyles vs. Harris,* 189 U. S., page 488:

"Apart from damages to the individual, relief from a great political wrong, if done, as alleged, by the people of a State and the State itself, must be given by them or by the legislative and political department of the Government of the United States."

A great deal is always said about the heated words of some members connected with constitutional conventions, especially in the South, as to the motive and object of the passage of the suffrage clause of constitutions, and we have heard such arguments made before the committees of Congress, but they surely should not bear upon this court, and this court has frequently looked upon the constitutions of the Southern States and viewed them judicially in the light in which they appear. It is settled law "That the intent of a legislative Act can only be gathered from its language. The convention is responsible only for its collective Acts embodied in law, and not at all for the views of individual members."

Fletcher vs. Peck, 6th Cranch, 87.
Dodge vs. Woolsey, 18 Howard, 371.
U. S. vs. Des Moines, 142 U. S., 545.

As to the Fourteenth Amendment, it is settled too long ago for us to quote from authority, but simply to refer to it, that the right of suffrage is not one of the immunities and privileges of the citizens of the United States protected under the Fourteenth Amendment, and that "the distinction between citizenship of the United States and citizenship of a State is clearly established and recognized," and, further, "That the immunities and privileges protected

thereby are those of the citizens of the United States and not those of the citizens of a State, and those belonging to the citizens of a State must rest for their security and protection where they have heretofore rested."

Slaughterhouse case, 16th Wallace, 36.
Minor vs. Happerset, 21 Wallace, 162.
U. S. vs. Reese, 82 U. S., 214.
Ex parte Yarborough, 110 U. S., p. 65.

As to the Fifteenth Amendment, it is brief, and we quote the first section:

"The rights of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude."

In *Carter vs. Texas,* 177 U. S., 442, Mr. Justice Gray enunciated the doctrine, reaffirmed through Mr. Justice Holmes by this Court in *Rogers vs. Alabama,* 192 U. S., p. 231, that "Whenever by any action of a State, whether through its Legislature, through its Courts or through its executive or administrative officers, all persons of the African race are excluded because of their race or color from serving as grand jurors in the criminal prosecution of a person of African race, the equal protection of laws is denied to him."

There is no such state of affairs as that in this case, either in law or in the conduct of the State or any of its officers at all. The suffrage article of South Carolina and the statute which it is based upon it allows any citizen, be he black or white, red or brown, if he applies to the Board of Registrars for registration and is denied, to appeal to a circuit judge at chambers and have a trial *de novo,* and from him appeal to the Supreme Court of the State, and then go by writ of error to the Supreme Court of the United States. There are many cases in which, when colored men have been convicted of murder, appeals have been

taken to the Supreme Court of the United States, and there are many cases arising from other States on the same line, in which the endeavor has been made to test the suffrage clauses in constitutions. We cannot refer to all of them, but call special and particular attention to the cases in re Wood, 140 U. S., 283, *Pope vs. Williams,* 193 U. S., 632, and most especially *Williams vs. Miss.,* 170 U. S., 213.

In the Wood case, *supra,* Mr. Justice Harlan, speaking for the Court, says:

"The ground upon which the appellant based his application for writs of habeas corpus and certiorari was that his trial and conviction were in violation of his rights under the Constitution and laws of the United States, in that the grand jurors who returned the indictment, and the petit jurors by whom he was tried, were drawn from lists from which were excluded, because of their race and color, all citizens of African race and descent. Certainly such exclusion was not required by the laws of New York.* * * A person to be qualified to serve as a trial juror for a Court in the city and county of New York must be: '1. A male citizen of the United States and a resident of that city and county. 2. Not less than twenty-one, nor more than seventy years of age. 3. The owner in his own right, of real or personal property, of the value of two hundred and fifty dollars; or the husband of a woman who is the owner in her own right of real or personal property of that value. 4. In the possession of his natural faculties, and not infirm or decrepit. 5. Free from all legal exceptions; intelligent; of sound mind and good character, and able to read and write the English language understandingly.' Section 1652, Code of Civil Procedure, Section 1079. It is admitted, and if it were not admitted, it is too clear to require discussion to prove that these statutory regulations do not authorize, indeed, do not permit the exclusion of any citizen from the lists of grand and petit jurors because of his race and color. They apply equally to citizens of the United States, resident in the city and county of New York, to whatever race they belong. So far as the participation in the administration of justice by service upon grand and petit juries is concerned, they ignore all distinction be-

tween citizens of the United States arising merely from race and color."

In the second case above quoted, Mr. Justice Peckham says on the subject under consideration:

"*The privilege to vote in any State is not given by the Federal Constitution or by any of its amendments.* It is not a privilege springing from citizenship of the United States. *Minor vs. Happerset,* 21 Wallace, 162. It may not be refused on account of race, color or previous condition of servitude, *but it does not follow from mere citizenship of the United States. In other words, the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct,* and upon *such terms* as to it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution. The State might provide that persons of foreign birth could vote without being naturalized, and as stated by Mr. Chief Justice Waite in *Minor vs. Happerset, supra,* such persons were allowed to vote in several of the States upon having declared their intention to become citizens of the United States. Some States permit women to vote, others refuse them that privilege. A State, so far as the Federal Constitution is concerned, might provide by its own constitution and laws that none but native born citizens should be permitted to vote, as the Federal Constitution does not confer the right of suffrage upon any one; and the condition under which that right is to be exercised are matters for the State alone to prescribe, subject to the conditions of the Federal Constitution, already stated; although it may be observed that the right to vote for a member of Congress is not derived exclusively from the State law. See Federal Constitution, Article I, Section 2. *Wiley vs. Sinkler,* 179 U. S., 58. But the elector must be one entitled to vote under the State statute. (*Id. id.*) See also *Swafford vs. Templeton,* 185 U. S., 487-491. In this case no question arises as to the right to vote for electors of President and Vice-President, and no decision is made thereon. *The question whether the conditions prescribed by the State might be regarded by others as reasonable or unreasonable is not a Federal one.*

We do not wish to be understood, however, as intimating that the condition of this statute is unreasonable or in any way improper."

In the third of the above cases, *Williams vs. Mississippi,* Mr. Justice McKenna, delivering the opinion by reference to the Constitution of Mississippi, shows how similar said constitution is to the Constitution of South Carolina now in question; that there were different periods for registration; that there was a right of appeal, and he remarks, at page 223, "there is no charge against the officers to whom is submitted the selection of grand or petit juries or those who procure the list of the juries. There is an allegation of the purpose of the convention to disfranchise citizens of the colored race, but of those we have no concern, unless the purpose is executed by the constitution or laws, or by those who administer them," and he concludes that the Constitution and Statutes of Mississippi "Do not on their face discriminate between the races, and it has not been shown that the actual administration was evil, only that evil was possible under them."

APPENDIX.

Constitution of South Carolina, 1895, Section 22, Article V, relating to juries:

"All persons charged with an offense shall have the right to demand and obtain a trial by jury. The jury in cases civil or criminal in all municipal Courts, and Courts inferior to Circuit Courts, shall consist of six. The grand jury of each county shall consist of eighteen members, twelve of whom must agree in a matter before it can be submitted to the Court."

"The petit jury of the Circuit Courts shall consist of twelve, all of whom must agree to a verdict in order to render the same."

"Each juror must be a qualified elector under the pro-

visions of this Constitution, between the ages of twenty-one and sixty- five years, and of good, *moral character.*"

Sections 1 and 2 of an Act of the General Assembly of South Carolina, entitled "An Act Relating to the Selection, Drawing and Summoning of the Jurors in the Circuit Courts of this State," Statutes, Volume XXIII, page 1066:

"Section 1. *Be it enacted* by the General Assembly of the State of South Carolina, That the County Auditor, the County Treasurer and the Clerk of the Court of Common Pleas of each county in this State shall perform the duties hereinafter set forth."

"Sec. 2. That the said County Auditor, County Treasurer and the Clerk of the Court of Common Pleas of each county shall immediately after the passage of this Act, and thereafter in the month of December of this and each succeeding year, prepare a list of such qualified electors, under the provisions of the Constitution, between the ages of twenty-one and sixty-five years, and of good, moral character, of their respective counties, as they may deem otherwise well qualified to serve as jurors, being persons of sound judgment and free from all legal exceptions, which list shall include not less than one from every three of such qualified electors under the provisions of the Constitution, between the ages of twenty-one and sixty-five years, and of good, moral character, to be selected without regard to whether such persons live within five miles or more than five miles from the courthouse."

SUFFRAGE PROVISION OF THE CONSTITUTION OF SOUTH CAROLINA OF 1895.

ARTICLE II.

RIGHT OF SUFFRAGE.

Section 1. All elections by the people shall be by ballot, and elections shall never be held or the ballots counted in secret.

Sec. 2. Every qualified elector shall be eligible to any office to be voted for, unless disqualified by age, as prescribed in this Constitution. But no person shall hold two offices of honor or profit at the same time: *Provided,* That any person holding another office may at the same time be an officer in the militia or a Notary Public.

Sec. 3. Every male citizen of this State and of the United States, twenty-one years of age and upwards, not laboring under the disabilities named in this Constitution and possessing the qualifications required by it shall be an elector.

Sec. 4. The qualifications for suffrage shall be as follows:

(*a*) Residence in the State for two years, in the county one year, in the polling precinct in which the elector offers to vote four months, and the payment six months before any election of any poll tax then due and payable: *Provided,* That ministers in charge of an organized church and teachers of public schools shall be entitled to vote after six months' residence in the State, otherwise qualified.

(*b*) Registration, which shall provide for the enrollment of every elector once in ten years, and also an enrollment during each and every year of every elector not previously registered under the provisions of this article.

(*c*) Up to January 1, 1898, all male persons of voting age applying for registration who can read any section in this Constitution submitted to them by the registration officer or understand and explain it when read to them by

the registration officer, shall be entitled to regi
become electors. A separate record of all perso
tered before January 1, 1898, sworn to by the re
officer, shall be filed, one copy with the Clerk of C
one in the office of the Secretary of State, on
February 1, 1898, and such persons shall remain d
qualified electors unless disqualified by the other p
of this article. The certificate of the Clerk of
Secretary of State shall be sufficient evidence to
the right of said citizens to any subsequent registr
the franchise under the limitations herein impose

(*d*) Any person who shall apply for registrat
January 1, 1898, if otherwise qualified, shall be re
Provided, That he can both read and write any s
this Constitution submitted to him by the re
officer or can show that he owns, and has paid
collectible during the previous year on propert
State assessed at three hundred dollars ($300) or

(*e*) Managers of election shall require of ever
offering to vote at any election, before allowing hi
proof of the payment of all taxes, including pol
sessed against him and collectible during the prev
The production of a certificate or of the recei
officer authorized to collect such taxes shall be c
proof of the payment thereof.

(*f*) The General Assembly shall provide for i
each duly registered elector a certificate of reg
and shall provide for the renewal of such certific
lost, mutilated or destroyed, if the applicant is sti
fied elector under the provisions of this Constitu
he has been registered as provided in subsection

Sec. 5. Any person denied registration shall
right to appeal to the Court of Common Plea
judge thereof, and thence to the Supreme Court,
mine his right to vote under the limitations impos
article, and on such appeal the hearing shall be

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and the General Assembly shall provide by law for such appeal, and for the correction of illegal and fraudulent registration, voting and all other crimes against the election laws.

Sec. 6. The following persons are disqualified from being registered or voting:

First. Persons convicted of burglary, arson, obtaining goods or money under false pretenses, perjury, forgery, robbery, bribery, adultery, bigamy, wife-beating, housebreaking, receiving stolen goods, breach of trust with fraudulent intent, fornication, sodomy, incest, assault with intent to ravish, miscegenation, larceny, or crimes against the election laws: *Provided,* That the pardon of the Governor shall remove such disqualification.

Second. Persons who are idiots, insane, paupers supported at the public expense, and persons confined in any public prison.

Sec. 7. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas, nor while a student of any institution of learning.

Sec. 8. The General Assembly shall provide by law for the registration of all qualified electors, and shall prescribe the manner of holding elections and of ascertaining the results of same: *Provided,* At the first registration under this Constitution, and until the first of January, 1898, the registration shall be conducted by a board of three discreet persons in each county, to be appointed by the Governor, by and with the advice and consent of the Senate. For the first registration to be provided for under this Constitution, the registration books shall be kept open for at least six consecutive weeks, and thereafter from time to time at least one week in each month, up to thirty days next preceding the first election to be held under this Constitution.